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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959 / 1960

No. 703 37

FRANK WILKINSON, PETITIONER,

vs.

UNITED STATES.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 12, 1960

CERTIORARI GRANTED MARCH 28, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

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**IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

[fol. 1]

No. 21756 (2 U.S.C. 192)

UNITED STATES OF AMERICA,

—v.—

FRANK WILKINSON.

INDICTMENT—Filed December 2, 1958

The Grand Jury Charges:

On July 30, 1958, in the Atlanta Division of the Northern District of Georgia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings, pursuant to Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828), and to H. Res. 5, 85th Congress.

Defendant, Frank Wilkinson, appeared as a witness before that subcommittee at the place and on the date above stated, and was asked a question which was pertinent to the question then under inquiry. Then and there the Defendant knowingly, wilfully and unlawfully refused to answer that pertinent question, to wit, Are you now a [fol. 2] member of the Communist Party?

A True Bill.

(Illegible), Foreman.

At Atlanta, Georgia.

James W. Dorsey, United States Attorney, J. Robert Sparks, Assistant United States Attorney.

[fol. 3]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY OF ARRAIGNMENT—January 12, 1959

Came the United States by counsel, James Robert Sparks, Assistant United States Attorney, and came the defendant by counsel, Roland Watts, Esq.

Thereupon counsel for defendant made a verbal motion for continuance which was verbally overruled by the Court.

The following plea was entered, to wit:

Plea

I, Frank Wilkinson, defendant, having received a copy of the within Indictment and having waived arraignment, Plead Not Guilty thereto.

In Open Court this 12 day of Jan., 1959.

Frank Wilkinson, Defendant, Roland Watts, Attorney for Defendant.

[fol. 7]

IN UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA,

—v.—

FRANK WILKINSON

No. 21,756 Criminal Indictment in One (1) Count for violation of (2 U.S.C. 192).

JUDGMENT AND COMMITMENT—January 23, 1959

On this 23rd day of January, 1959 came the attorney for the government and the defendant appeared in person and by counsel; Rowland Watts, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a verdict of guilty of the offense of failing to answer a question asked by a subcommittee on Un-American Activities as charged In the Indictment, and the Court having asked the defendant whether [fol. 8] he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Twelve (12) Months.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Boyd Sloan, United States District Judge.

Filed February 2, 1959.

[fol. 9]

IN UNITED STATES DISTRICT COURT

Transcript of Proceedings—January 20, 1959

Proceedings before the Honorable William Boyd Sloan, Judge, Tuesday, January 20, 1959, at Atlanta, Georgia.

APPEARANCES OF COUNSEL:

For the Government: Robert Sparks, Esq.

For the Defendant: Rowland Watts, Esq.

The above named case having come on for trial by jury, jurors were qualified, jury duly impaneled, sworn, witnesses shown, rule was invoked.

Proceedings

The Court: All right, Mr. Sparks.

Mr. Sparks: If it please the Court, I would like to make an opening statement to the jury.

The Court: Very well.

OPENING STATEMENT OF COUNSEL FOR PLAINTIFF

Mr. Sparks: Gentlemen of the jury, my name is Bob Sparks. I am an Assistant United States Attorney here in this Court. My home is Greenville, Georgia. I together with Ralph Ivey, who is standing over there at the rail will present this case to you. This is an unusual case, possibly the first case of this kind to be tried in the history of the State of Georgia, to the best of my knowledge and belief.

[fol. 10] I will read the indictment to you and then very briefly explain to you what the government expects to prove in the case and what the government thinks the issues are in the case. The grand jury charges on July 30, 1958 in the Atlanta Division of the Northern District of Georgia a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings pursuant to Public Law 501, Section 121, 79th Congress, Second Session, 60 Statute 828. That refers to the law that created this committee of the House of Representatives and to House Resolution No. 35, 85th Congress. Defendant Frank Wilkinson appeared as a witness before that subcommittee at the place and on the date above stated and was asked the question which was pertinent to the question then under inquiry. Then and there the defendant knowingly, wilfully and unlawfully refused to answer that pertinent question, to wit, "Are you now a member of the Communist party." Gentlemen, we intend to show very briefly that three congressmen were designated as a subcommittee of the House Committee on un-American Activities to come here to Atlanta, Georgia and to hold a hearing on this question or this subject. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South; Communist party propaganda and activity in the South; and the entry and

dissemination within the United States of foreign Communist party propaganda. We expect to show that this subcommittee convened here on July 29, 30, 31, 1958 in the adjoining Court room, right down the hall; that Mr. Wilkinson was subpoenaed as a witness and appeared as a witness on July 30, 1958; that he was asked the question which I have asked you, "Are you now a member of the Com-[fol. 11] munist party?", and wilfully refused to answer that question. We expect to show that Mr. Wilkinson's refusal was deliberate. The burden is on us to show that his refusal was wilful. The burden is also on us to show that his refusal, at the time he refused to answer, that he knew or should have known that the answer was pertinent to the subject which the committee was inquiring into.

Now, so far as the government is concerned, those are the issues that you will be called upon to try in this case. I want to say to you that it is not in issue, it is not a question for the jury to determine whether or not Mr. Wilkinson actually was a communist at that time or what his answer might have been had he made it, whether it would have been yes or no. That's not the issue of this case. That will be presented to you. The only issue as the government sees it is did he refuse to answer the question deliberately; was he ordered to do so, and after having been ordered to do so, did he wilfully refuse to answer it and should he have known as a reasonable man that his answer was pertinent to the subject that the committee was inquiring into.

We also have to prove that there was a quorum of the committee present. We expect to show that Representatives Tuck, Willis and Jackson, Representative Willis being the chairman of the subcommittee, were present at the actual times during his testimony. I don't know what and can't speculate on what the defense will offer, but so far as we know those are the only issues so far as the government is concerned, the ones that I have outlined to you which you will be called upon to decide.

[fol. 12] Now, it will be necessary for me during the trial of this case at times to request the Court to ask that you be excused and go out in the corridor while certain testimony is being taken. I want to tell you that that's not any

desire on the part of the government to keep anything from a jury or to keep you from knowing the facts to which you are entitled. However, there are certain rules of law governing the trial of a case of this type and these rules of law say that certain questions are for the determination of the Judge alone and that the jury is not supposed to hear the questions or the testimony in relation to those issues. So that when I ask that you be excused, I repeat it is not from any desire to keep you from knowing everything there is to know about the case but simply to comply with decisions which have been rendered by the Supreme Court and Courts of Appeal of this country.

We expect that this case will not take long, at least not on the part of the government. We only have two witnesses. We are going to try to move just as rapidly as possible. I feel if I prove what I stated to you that I am going to prove or what I hope to prove, that the only possible verdict would be a verdict of guilty.

OPENING STATEMENT OF COUNSEL FOR DEFENDANT

Mr. Watts: Your Honor, gentlemen of the jury, I am Rowland Watts, attorney for the defendant. The defendant is Frank Wilkinson who is sitting over there alongside of me. I am a member of the Maryland bar and I have been admitted to this Court especially for the purpose of this case by leave of the Court. The defendant is charged with having wilfully refused to answer a question asked by a subcommittee of Congress. Now, the objective fact of the matter is that the question was asked [fol. 13] and the defendant refused to answer. However, as Mr. Sparks has pointed out to you, the government has a duty to establish much more than objective facts and some of the proceedings here today will relate very definitely to the question of the power of the subcommittee to ask the question asked, the power of the subcommittee to conduct the investigation that resulted in the subpoenaing of the witness. It is possible that the defendant will not take the stand. This will depend in a large extent on whether or not in our opinion we feel the government has proved its case. Thank you.

[fol. 21] COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Sparks: If it please the Court, I was intending to transmit those changes to you as Exhibit No. 3 so that the original record of the committee would not have to be left in evidence and that this could be substituted for it. The changes have not been made in this one. I didn't know there were so many. I wonder if counsel insists on having

an absolutely accurate copy as shown in U. S. Exhibit No. 1 or would you agree as to the authenticity of the U. S. Exhibit No. 3 which is, of course, the printed volume.

Mr. Watts: Well, insofar as it is admitted, why, we would agree to its authenticity at that time.

The Court: Without waiving any objection to its admissibility, you do waive objections on the ground of authenticity?

[fol. 22] Mr. Watts: Yes, sir, on the assurance that they are minor corrections.

The Court: Very well, sir. Let the record so show.

Is there any reason why the jury cannot come back at this time?

(No response.)

The Court: Let the jury come back to the box.

(The jury returned to the box.)

Mr. Sparks: I have no other questions, Your Honor.

Mr. Watts: No questions.

(Witness excused.)

Mr. Sparks: I call Mr. Arens.

RICHARD ARENS, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Sparks:

Q. Will you state your name and occupation, please?

[fol. 23] A. Richard Arens. I am Staff Director of the

Committee on un-American Activities of the House of Representatives.

Q. How long have you held that position, sir?

A. Approximately two and one-half years.

Q. I will ask you whether or not you are a member of the bar, sir? Are you an attorney?

A. Yes, sir.

Q. Of what bar are you a member, or what bars are you a member of?

A. I've been admitted to the bar of the State of Missouri, the District of Columbia, the Federal Courts, including the Supreme Court of The United States.

Q. What are your duties with the committee?

A. Well, as staff director of the committee, my general duties are to carry out the policy directives of the committee and acting under the general superintendency of the chairman of the committee to work with the staff in the development of hearings, preparation of proposed legislation, reports, consultations, general staff activities.

Q. What was your occupation or experience immediately prior to having come with the House Committee on un-American Activities?

A. Immediately prior to my present position I was Staff Director of the Immigration Subcommittee of the United States Senate and also Staff Director of the Internal Security Subcommittee of the United States Senate.

Q. Were you occupying your present position as Staff Director of the House un-American Activities Committee at the time that a subcommittee held hearings in Atlanta, Georgia on July 29, 30 and 31 last year?

A. Yes, sir.

[fol. 24] The Clerk: U. S. Exhibit for identification No. 4 is a certificate from the House of Representatives dated January 3, 1957.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 4 for identification.)

The Clerk: U. S. Exhibit for identification No. 5 is a certificate of the House of Representatives dated January 7, 1959.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 5 for identification.)

By Mr. Sparks:

Q. Mr. Arens, I will show you U. S. Exhibit No. 4 and ask you if you are familiar with House Resolution No. 2 as shown on that Exhibit No. 4?

A. Yes, sir.

Q. Do you know who the Clerk of the House of Representatives was in 1957 and '58, the 85th Congress?

A. Yes, sir, Ralph Roberts.

Q. I will show you U. S. Exhibit No. 5 and ask you to identify that?

A. This is a resolution of the House of Representatives dated January 7, 1959 pursuant to which Ralph R. Roberts was chosen Clerk of the House of Representatives and other persons were chosen to various offices of the House of Representatives.

Q. Do you know, Mr. Arens, that Ralph R. Roberts, Clerk of the House of Representatives, is the official custodian of House documents and papers?

A. Yes, sir.

[fol. 25]. Mr. Sparks: If it please the Court, I will tender in evidence U. S. Exhibit No. 4 and U. S. Exhibit No. 5, stating that their offer is to show that Ralph Roberts is now the Clerk of the House of Representatives for the 86th Congress which has just convened and the purpose of showing that he was the Clerk for the 85th Congress which has just finished.

The Court: Any objections?

Mr. Watts: No objection.

The Court: They are admitted.

(The documents referred to above, heretofore marked U. S. Exhibits Nos. 4 and 5 for identification, were received in evidence.)

Mr. Sparks: At this time, if it please the Court, I respectfully request the Court to take judicial notice of the 60th Statute at Large, Page 828, that portion entitled Committee on un-American Activities, which is the authority under which this committee is presently operating.

The Court: Very well, sir.

[fol. 26] The Clerk: U. S. Exhibit for identification No. 6 is a resolution of the House of Representatives dated January 3, 1957.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 6 for identification.)

By Mr. Sparks:

Q. I show you U. S. Exhibit No. 6, sir, and ask you to identify that for the record, if you know what it is?

A. This is a resolution passed by the House of Representatives January 3, 1957, to the effect that the rules of the House of Representatives which were applicable in the 84th Congress, together with all applicable provisions Legislative Reorganization Act of 1946, as amended, were adopted as the rules of the House of Representatives for the 85th Congress.

Mr. Sparks: I tender in evidence U. S. Exhibit No. 6.

Mr. Watts: No objection.

The Court: It is admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 6 for identification, was received in evidence.)

[fol. 27] The Clerk: U. S. Exhibit for identification No. 7 is a book entitled Constitution, Jefferson's Manual, and Rules of the House of Representatives.

(Thereupon, the book referred to above was marked U. S. Exhibit No. 7 for identification.)

By Mr. Sparks:

Q. I will show you U. S. Exhibit No. 7, sir, and ask you to identify that for the record, if you know what it is.

A. Yes, sir, this is the book which contains the Rules of the House of Representatives, it also contains the Constitution of The United States and miscellaneous documents which are used and referred to by the representatives in the conduct of the proceedings of the House.

Mr. Sparks: I offer U. S. Exhibit No. 7.

Mr. Watts: No objection.

The Court: Admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 7 for identification, was received in evidence.)

The Clerk: U. S. Exhibit for identification No. 8 is a certificate of Ralph R. Roberts, House of Representatives, [fol. 28] Clerk, certifying to the members of the House of Representatives.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 8 for identification.)

By Mr. Sparks:

Q. Identify that, if you know what this is.

A. This is a certification by the Clerk of the House of Representatives, Ralph Roberts, that certain persons are or were as of the date of the certification members of the House of Representatives and were members constituting the Committee on un-American Activities of the House of Representatives.

Mr. Sparks: I tender U. S. Exhibit No. 8 in evidence.

Mr. Watts: No objection.

The Court: Admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 8 for identification, was received in evidence.)

The Clerk: U. S. Exhibit for identification No. 9 is a certificate of Ralph R. Roberts, Clerk of the House of Representatives, on the Committee of Un-American Activities as of May 21, 1958.

[fol. 29] Mr. Sparks: I might add for further identification for the record that it's a resolution authorizing hearings to be held in Atlanta, Georgia.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 9 for identification.)

By Mr. Sparks:

Q. I show you that exhibit, sir, No. 9, and, ask you what that is?

A. Exhibit No. 9 is a certification by Ralph Roberts, Clerk of the House of Representatives, that the document which is attached to the certification is a true and correct excerpt from minutes of the Committee of Un-American Activities of the House of Representatives of May 21, 1958.

Mr. Sparks: I tender U. S. Exhibit No. 9 in evidence.

Mr. Watts: No objection.

The Court: Admitted in evidence.

(The document referred to above, heretofore marked U. S. Exhibit No. 9 for identification, was received in evidence.)

The Clerk: U. S. Exhibit No. 10 for identification is a certificate of Ralph R. Roberts, Clerk of the House of Representatives, attached thereto is an excerpt on minutes, the Executive Session of January 22, 1957.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 10 for identification.)

By Mr. Sparks:

Q. I will show you that exhibit, sir, U. S. Exhibit No. 10, and ask you to identify that.

A. Exhibit No. 10 is a certification by Ralph Roberts, Clerk of the House of Representatives, attached to the document is a true and correct excerpt from the minutes of the Committee on Un-American Activities, January 22, 1957.

Q. Were you present at that meeting, Mr. Arens?

A. Yes, sir.

Q. What action was taken at that meeting as shown by that excerpt from your own recollection?

A. The Committee on Un-American Activities at that meeting passed a resolution to the effect that the chairman of the committee is authorized from time to time to appoint subcommittees and it also specifies the elements

which must be taken into account in constituting the subcommittees.

Mr. Sparks: I offer U. S. Exhibit No. 10 into evidence.

Mr. Watts: No objection.

The Court: Admitted.

[fol. 31] (The document referred to above, heretofore marked U. S. Exhibit No. 10 for identification, was received in evidence.)

The Clerk: U. S. Exhibit No. 11 for identification is a certificate of Ralph R. Roberts, Clerk of the House of Representatives, attached thereto is a letter dated January 24, 1958.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 11 for identification.)

By Mr. Sparks:

Q. I show you U. S. Exhibit No. 11, Mr. Arens, and ask you what that is.

A. U. S. Exhibit No. 11 is a certification by Ralph Roberts, Clerk of the House of Representatives, that the document which is attached to the certification is a true and correct copy of an order issued by Francis Walter, who is chairman of the Committee of Un-American Activities.

Q. That was directed to you, was it not, sir?

A. The document which is attached to the certification is a directive to me as Staff Director of the Committee notifying me of his appointment of a subcommittee.

Mr. Sparks: We tender U. S. Exhibit No. 11.

Mr. Watts: No objection.

[fol. 32] The Court: Admitted in evidence.

(The document referred to above, heretofore marked U. S. Exhibit No. 11 for identification, was received in evidence.)

By Mr. Sparks:

Q. I will ask you, did a subcommittee of the House pursuant to the documents which have been produced—I should say, subcommittee of the House Committee on Un-American Activities meet in Atlanta, Georgia, on July

29, 30 and 31, 1958?

A. Yes, sir.

Q. Did you attend those meetings and were you present?

A. Yes, sir.

Q. Where were they held, if you recall?

A. Here in this Court House.

Q. Did you participate in the proceedings, sir?

A. Yes, sir.

Q. What role did you play in the proceedings, principal role?

A. I interrogated the witnesses.

Q. Do you know Mr. Frank Wilkinson by sight?

A. Yes, sir.

Q. Could you point him out, sir?

A. He is the person seated at the table facing me, the table on my left on the left of the table.

Q. On the left as you face him?

A. Yes, sir. He is seated to the right of counsel who has been participating in these proceedings.

[fol. 33] The Court: We will recess at this time for 15 minutes.

(Recess had.)

The Court: All right, proceed.

By Mr. Sparks:

Q. I hand you U. S. Exhibit No. 2, which has been identified, Mr. Afens, and I will ask you—I believe you just finished identifying Mr. Wilkinson just before the recess. I will ask you whether or not Mr. Wilkinson appeared in Atlanta, Georgia on July 30, 1958 before the Subcommittee of the House Committee on Un-American Activities as a witness?

A. Yes, sir.

Q. Was he sworn?

A. Yes, sir.

Q. Did you ask him the question alleged in the indictment: "Are you now a member of the Communist party?"

A. Yes, sir.

Q. Did he answer that question?

A. No, sir.

The Clerk: U. S. Exhibit for identification No. 12 is a certificate of Ralph R. Roberts, Clerk of the House of Representatives, and attached thereto are the minutes of August 8, 1958.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 12 for identification.)

[fol. 34] By Mr. Sparks:

Q. I will ask you whether or not any action was taken by the subcommittee on the refusal of Mr. Wilkinson to answer that question in Atlanta, Georgia on July 30, 1958?

A. Yes, sir. Thereafter, on August 8, the subcommittee passed a resolution to the general effect that the subcommittee would report the facts in the Wilkinson case as well as the facts in another case to the full Committee on Un-American Activities with a recommendation to the full Committee on Un-American Activities that the witnesses be cited for contempt of the House of Representatives for their refusal to answer certain questions.

Q. Were you present at that meeting, sir, or do you recall?

A. Yes, sir.

Q. Was there a quorum present of the three members of the subcommittee?

A. Yes, sir.

Q. What is U. S. Exhibit No. 12?

A. It is a certification by the Clerk of the House of Representatives and attached to the certification is a true and correct copy of the minutes of a subcommittee of the Committee on Un-American Activities meeting of August 8, 1958.

Mr. Sparks: I tender U. S. Exhibit No. 12.

Mr. Watts: I object to the admission of Government's Exhibit No. 12 for identification in that it refers to persons other than the defendant.

[fol. 35] The Court: I will instruct the jury, of course, that they will give no consideration to reference to any other person named in it. You are tendering it as—

Mr. Sparks: Only as it has reference to Mr. Wilkinson. There are two paragraphs in it. One deals with Mr. Wilkinson and the other with another person. The part as to the other person has no relevancy in this case and we are only—

Mr. Watts: Very well.

The Court: You will give no consideration to the paragraph in the United States Exhibit No. 12 that has reference to some defendant other than the defendant on trial, Frank Wilkinson. You will only consider that portion that refers to the defendant here, Frank Wilkinson.

(The document referred to above, heretofore marked U. S. Exhibit No. 12 for identification, was received in evidence.)

The Clerk: U. S. Exhibit for identification No. 13 is a resolution of the House of Representatives No. 685.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 13 for identification.)

[fol. 36] By Mr. Sparks:

Q. I show you U. S. Exhibit No. 13, Mr. Arens, and ask you what that is, if you know?

A. It is a certified copy of H. Res. 685 of the 85th Congress, Second Session, which in essence is that the Speaker of the House of Representatives certify a report by the Committee on Un-American Activities as to the refusal of Frank Wilkinson to answer questions before a subcommittee to the United States Attorney for the Northern District of Georgia for proceedings according to law.

Q. Does that indicate the adoption of that resolution?

A. Yes, sir. The certification by the Clerk of the House of Representatives, Ralph Roberts, is that the resolution was adopted on August 13, 1958.

Mr. Sparks: I tender that exhibit.

Mr. Watts: No objection.

The Court: Admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 13 for identification, was received in evidence.)

The Clerk: U. S. Exhibit for identification No. 14 is a letter from Sam Rayburn to the U. S. Attorney.

[fol. 37] (Thereupon, the document referred to above was marked U. S. Exhibit No. 14 for identification.)

By Mr. Sparks:

Q. I show you U. S. Exhibit No. 14, sir, and ask you what that is, if you know?

A. This is a certification attested to by the Clerk of the House of Representatives of the Speaker of the House of Representatives, Sam Rayburn, to the United States Attorney for the Northern District of Georgia respecting Frank Wilkinson and the refusal by him to answer certain questions for a subcommittee of the Committee on Un-American Activities.

Mr. Sparks: I tender this in evidence.

Mr. Watts: No objection.

The Court: Admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 14 for identification, was admitted in evidence.)

Mr. Sparks: If it please the Court, at this time I believe the time has arrived when the jury should be excluded from the Court room.

[fol. 39] Mr. Sparks: If it please the Court, I now propose to show actual pertinency outside the presence of the jury under Federal Rule 218 Federal Second 843.

By Mr. Sparks:

Q. Mr. Arens, in your capacity as Staff Director of the House Un-American Activities Committee, I will ask you whether or not you have access to the same information which the committee receives? Just tell us in your own words how you function in relation to the committee so far as disseminating information about your investigation and your legislative programs that are under investigation?

A. Well, I should say, if I understand the question, that the information comes unto me first and then to the committee's ears in conferences which I have from time to time with the committee and more particularly with the chairman of the committee.

Q. In other words, the information comes through you and goes to the committee? Would you say that is a fair statement, sir, that any information the committee has you also have?

A. Yes, sir.

Q. Now, what was the subject under inquiry when the House Un-American Activities Committee, the subcommittee, that is, came down to Atlanta, Georgia in July of last year, July 29, 30, 31 of 1958?

A. The general subject under inquiry by the committee was the extent and character and objects of communist colonization, infiltration in the textile industry and other [fol. 40] basic industries located in the South. The extent to which the Communist party and communists were engaging in communist propaganda activities in the South, the pattern of communist activities through communist front organizations and the like in the South.

Q. Did it have any relationship to foreign communistic propaganda?

A. Yes, I should have mentioned that too. We were also concerned and as the record will reflect, received testimony respecting the dissemination of foreign communistic propaganda in the South.

Q. Mr. Arens, what was the legislative purpose of the committee of conducting an inquiry into that subject that you just outlined to us?

A. I think that it would necessitate just a word about the duty of the committee which we were undertaking to discharge in his hearing as well as in other hearings.

Q. Very well, sir.

A. First of all, under the Legislative Reorganization Act, each committee of the Congress is under a mandate to maintain a continuing surveillance over the administration and operation of the various laws which fall within the purview of that committee. In the instance of the Committee of Un-American Activities, it would include the adminis-

tration and operation of such laws as the Internal Security Act, the Communist Control Act, and various laws pertaining to foreign agents and registration, espionage, sabotage statutes, then the committee itself has had before it and did have at the time of the Atlanta hearings a number of legislative proposals, the principal one of which was a bill then pending which had numerous provisions, proposed amendments to the Internal Security Act, the Foreign [fol. 41] Agents Registration Act and the like, dealing with communist propaganda, with communist activities, with indication of communism, with legislative attempts to meet certain problems created as a result of certain decisions of the Courts, more particularly I could specify decisions in the Nelson Case, in the Yates Case, particularly in the Yates Case, which precipitated issues as to what the term organizing means. Does it mean only an initial organizing on behalf of the Communist party or could it mean or could it be legislatively said to mean organizational activities by a person who is a communist.

Q. What was the name of that bill that was then pending?

A. One of the bills was H.R. 9937 which we allude to in the staff as the omnibus bill. It contains literally dozens of provisions.

The Clerk: U. S. Exhibit for identification No. 15 is a certificate of Ralph R. Roberts, Clerk of the House of Representatives, and attached thereto is a bill H. R. 9937 of the 85th Congress, Second Session.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 15 for identification.)

By Mr. Sparks:

Q. I show you U. S. Exhibit No. 15 and ask you if this is a copy of that pending bill that you had reference to that you testified about just a moment ago?

A. Yes, sir, this is H. R. 9937 which was then pending before the Committee on Un-American Activities.

Q. Would you just briefly summarize some of the portions of that bill. The bill itself will be introduced,

but for the information of the Court and for the record, if you could just briefly summarize it.

Mr. Watts: If Your Honor please, I seek clarification of this procedure. This is an interesting discussion of the history of the committee, but it doesn't seem to me to be particularly relevant to the indictment which we are defending.

The Court: I understand from the statement of the United States Attorney that he conceives it to be his burden to show that the question asked this defendant was pertinent to the subject of inquiry and that it was a proper matter for inquiry due to pending legislation. I assume that's the purpose of it.

Mr. Sparks: That's the purpose, Your Honor.

Mr. Watts: Then, Your Honor, will these exhibits be proper exhibits to be available before the jury?

The Court: They have not been tendered in evidence.

Mr. Watts: But they will be and I don't want to unnecessarily object to them if they are not going to be.

[fol. 43] The Court: If the oral testimony would not be proper for consideration by the jury, then the documentary evidence would be likewise not available to the jury, is my understanding of the rule.

By Mr. Sparks:

Q. Will you just briefly summarize some of the things that are in the bill, without going into detail, sir?

A. One of the sections—I will just turn the pages of the bill quickly, if you please, counsel. One of the first provisions I observe here is the provision precluding the abatement of proceedings before the Subversive Activities Control Board in those instances in which an organization which is up for consideration for citation by the Subversive Activities Control Board changes its name or form. Another provision is one which relates to alleged misbehavior before congressional committees of certain persons. Another pertains to the appearance of certain persons as counsel. Another provision is a redefinition of the term "organize" which I alluded to a few moments ago coming as a result of the decision in the Yates case. Another is a provision which

would overcome the effect of the Nelson case which in effect —I speak only crudely,—precluded enforcement of state sedition statutes. Another one is a provision relating to the production of certain federal records in a proceeding, the issue of which was created by the Jennings case. Another one—and I am only skimming the bill, as you understand—pertains to the disclosure of information which is obtained as a result of interception of certain communications, so-called wire tapping subjects. Another one pertains to the [fol. 44] unauthorized disclosure of defense information. Another one pertains to the use of false names or a false name in procuring certain benefits under the Social Security laws. Another pertains to the limitation of actions, that is, the so-called statutes of limitations as it relates to treason, espionage, sedition and other subversive activities. Another series of provisions are proposed amendments to the Foreign Agents Registration Act which would bear upon activities of persons who disseminate communist propaganda emanating from abroad. There are a series of provisions on that. There are a series of proposals in this bill relating to immigration and passport matters and nationality matters. There are also pending before the committee other legislative proposals besides this particular bill in the form of suggestions, in the form of recommendations and the like.

Q. I will ask you whether or not one of the purposes had anything to do with the Communist Control Act of 1954?

A. Yes, sir, there was a proposal to the effect that the Communist Control Act of 1954 be amended so as to provide an outright outlawry of membership in the Communist party.

Q. I believe you mentioned the Foreign Agents Registration Act, did you not, sir?

A. Yes, sir, there were a series of proposals and some of which were and are incorporated in the bill, the omnibus bill, H. R. 9937.

Mr. Sparks: I tender in evidence the House Bill, H. R. 9937.

The Court: For consideration by the Court on the question of pertinency?

[fol. 45] Mr. Sparks: Yes, sir.

Mr. Watts: No objection to that purpose.

The Court: Admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 15 for identification, was received in evidence.)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Sparks: I now tender in evidence U. S. Exhibit No. 2 which has previously been identified and has been one of the documents in which the testimony of Mr. Wilkinson is contained, the one the reporter pointed out one correction on Page 8 and said the rest of it was correct as compared to his notes.

The Court: Tender it to counsel.

Mr. Watts: Your Honor, we object to the admission of Government's Exhibit No. 2 for identification for the following reasons: One, it in part is surplus because it's incorporated into Government's Exhibits 9, 10, 12 and I believe one other. But more important it contains material which is immaterial and irrelevant to the indictment in that it contains in it a recommendation of the House Committee that the defendant be cited not upon the one question—he indicted not on one question. He was cited on three [fol. 46] questions and was only indicted on one of them, and also because it contains the entire transcript of his testimony before the committee and is not confined to the single question under which he is indicted. We have no objection to the part of it—if there was some way in which it could be divided, we would accept that. But as it stands, we object to it.

The Court: What do you say to that, Mr. Sparks?

Mr. Sparks: We think the whole thing is admissible because it's an integral part of the process by which this case came to trial. This document is the proceedings against Frank Wilkinson on which the House voted, on which the resolution was based.

The Court: He states that he has no objection to the relevant portions of it, but he says that there are three

questions that they recommended he be cited on and he is prosecuting it on only one.

Mr. Sparks: Well, I don't see how that would be prejudicial. He is getting the benefit of two of them. I understand there were holdings where a witness refuses to answer any question at all before the committee, the refusal to answer all questions is only a single contempt and, therefore, we take only one question to indict him on. We anticipate and expect to offer the entire testimony, the entire transcript of his testimony, and we expect to ask the Court to allow us to read that to the jury because we think that— [fol. 47] The Court: If it's admitted in evidence, you have the right to read it to the jury.

Mr. Sparks: Well, I mean I am not tendering it conditionally as I had the other for Your Honor's consideration alone. The transcript will show he did not answer any questions. He refused to answer them all. He just gave his name. There is a holding in U.S. against Josephson where it is prima facie evidence of pertinency and we think the failure to answer any question at all does have probative value which should go to the jury on the question of whether his refusal to answer this one question was wilful or not.

The Court: It doesn't quite reach the question he makes. I think myself that his refusal to answer any question would be material, but as to what those questions were, if he refused to answer when they are not part of the charges here—

Mr. Sparks: If it please the Court, this is on page 2. It says that said Frank Wilkinson having appeared as a witness, having been asked the question, namely, "Are you now a member of the Communist party?" secondly, "I would now like to display this document to you and ask you whether or not you made call to places indicated in the document at the time revealed by the document?" Third, "Are you now the principal driving force, the leader of the Emergency Civil Liberties Committee?"

[fol. 48] That is simply a quote here on page 2 of the testimony that you will find on about page 5 in the transcript of what he actually testified to, his refusal to answer. And the fact that he was only indicted on one of them, I don't see how it could be prejudicial to him because he is only being indicted on one-third of what Congress recom-

mended he be indicted for. However, I have no objection to putting a piece of tape over that portion of the testimony.

Mr. Watts: It also appears on page 13. If we could eliminate the last two paragraphs on page 9, all of 10, 11, 12 and half of 13, in other words, all testimony after he had been ordered to answer the question "Are you now a member of the Communist party?" and had refused to answer. It is one thing for him to be a member of the Communist party or refuse to answer that question. It is certainly prejudicial if the jury is going to have before it statements on whether or not he refused to answer questions concerning telephone calls from an Atlanta hotel or whether or not he is the driving force behind an organization which Mr. Arens contends is a subversive organization. It has as one of its purposes the elimination of this committee. I don't think this is relevant to the indictment and I think it is definitely prejudicial to the accused.

Mr. Sparks: We think, Your Honor, on the question of awareness of pertinency which is in the Watkins case that anything that was said to him during these proceedings would be a matter for the jury's consideration as to whether or not he was sufficiently informed of the pertinency of [fol. 49] the question even if he went and refused to answer it. We think that anything that took place before the committee, the colloquy between the committee and he would be relevant on the question of not only wilfulness, but on the question of awareness.

The Court: Yes; it would probably have some relevancy to this.

Mr. Watts: Only on the question under which he was indicted, Your Honor, wouldn't it?

The Court: I think not. I think if the other questions reveal the general scope of the examination and the pertinency of the question that is in the indictment to the general inquiry, then I think if the other questions had a bearing on that or tended to put him on notice of that pertinency, it would have relevancy here. I will overrule the objection and allow U. S. Exhibit No. 2 in evidence.

(The document referred to above, heretofore marked U. S. Exhibit No. 2 for identification, was received in evidence.)

Mr. Sparks: If it please the Court, U. S. Exhibit No. 1, as you will recollect, has been identified by the stenographer and he has actually made the changes in that. I realize that counsel has agreed to stipulate that the printed copy was correct, but since this has been identified as positively correct, I feel it would be better to offer that rather than [fol. 50] U. S. Exhibit No. 3. I offer this for the consideration of the Court with respect to pertinency which is the testimony of the complete proceedings on July 29, 30 and 31.

Mr. Watts: For the limited purpose of submission to the Court and not the jury, is that correct?

Mr. Sparks: Yes, that is correct.

Mr. Watts: No objection.

The Court: Admitted for that purpose.

(The document referred to above, heretofore marked U. S. Exhibit No. 1 for identification, was received in evidence.)

The Court: I think that's about as far as we will be able to go this afternoon, Mr. Sparks. Any other matter to come before the Court before we adjourn for the day?

(No response.)

The Court: We will adjourn until 9:30 tomorrow morning.

(Thereupon, the hearing was adjourned until 9:30 a. m. Wednesday.)

[fol. 51]

Proceedings

The Court: Proceed, gentlemen.

Mr. Sparks: If it please the Court, I think probably the jury should be retired. We have not completed our evidence in that other matter.

The Court: Retire to the corridor and remain where we can call you back.

(The jury retired to the corridor.)

Mr. Sparks: Call Mr. Arens back to the stand, please.

RICHARD ARENS, resumed the stand and testified further as follows:

Direct examination (continued).

By Mr. Sparks:

Q. You are Mr. Richard Arens who was on the stand at the close of testimony yesterday, I believe that's right?

A. Yes, sir.

Q. Mr. Arens, I would like for you to summarize briefly the evidence which the subcommittee had heard on the previous day before Mr. Wilkinson was called, that is, with reference to Mr. Amando Pena with reference to the activities of the Communist party in the South with reference [fol. 52] to colonizing the infiltration measures in the textile industry. Just briefly summarize it, not in any detail.

Mr. Watts: I assume this continues to have to do with the question of pertinency?

The Court: I assume that's the purpose.

Mr. Sparks: Yes, that's the purpose.

The Witness: In essence and in very concise summary, Mr. Pena who had until a short time prior to the hearings in Atlanta been an undercover agent of the Federal Bureau of Investigation in the Communist party—

Mr. Watts: If Your Honor please, I believe from the witness' beginning recital that this is clearly not material to the question of pertinency. It seems to me that the witness is beginning to develop testimony concerning an entirely different field of activity and certainly it has not up to this point been related to the defendant and I don't believe that it can be.

Mr. Sparks: If it please the Court, I would like to make this statement in response to counsel's objection. Counsel's statement in his opening statement to the jury to the effect—I don't recall the exact statement—that the defense would be based in part on the fact that the Un- [fol. 53] American Activities Committee had no authority to investigate these matters. We have had evidence of their legislative purpose in coming here, that is, to in-

investigate these things. I want a very brief recital of what the testimony developed was to show that actually they did have a reason for coming here to Georgia to investigate it and that they did have relevant testimony on that point. I'm not going to dwell on it at very great length.

The Court: I believe you are undertaking to show the evidence that was given on the first day of their investigation here in Atlanta?

Mr. Sparks: That's right.

The Court: That would not be evidence of them having previous cause to come here, would it?

Mr. Sparks: Yes, sir. If a witness was subpoenaed prior to their coming here and if he was called and gave testimony, I think it would show they had a reason for holding an investigation.

The Court: No, sir. I think that reason would have to have existed prior to the time that they had the investigation. Not after. What they developed might show their judgment in coming was good, but it wouldn't furnish any reason for it. The reason had to exist before they decided to hold the investigation in Atlanta and could not possibly depend on what was developed on the first day of the inquiry.

Mr. Sparks: Very well, sir. I will rephrase my question.

By Mr. Sparks:

Q. Mr. Arens, did the committee before deciding to hold the hearings in Atlanta, did they have knowledge of the anticipated testimony of Mr. Pena?

A. Yes, sir. In hearings which the committee had several months prior to the hearings which were scheduled in Atlanta, Mr. Pena testified in Boston, Massachusetts at which time, among other things, he testified respecting information to his certain knowledge about communist penetration, infiltration in the South. It was not developed extensively in the Boston hearings, however, because we were at that time concerned with activities principally in that area.

Q. I believe Mr. Pena then was a person who was working in cooperation with the FBI and pretending to be a communist, is that correct, in essence?

A. Yes, sir.

Q. Then, very briefly, tell us what information you had which you had received from Mr. Pena before you came to Georgia which influenced the committee in deciding to come to Georgia to hold the hearings.

Mr. Watts: Unless he is going to give information from Mr. Pena concerning the defendant, I believe that it is not relevant, if Your Honor please, and prejudicial.

[fol. 55] The Court: I believe he is undertaking to go into the question of the subject matter of the inquiry of the committee, the scope, and I believe that that is one of the things that the government must prove, that the question asked here was within the scope of their general inquiry that they were conducting here at the time, and for that purpose I think it would have some relevancy.

Mr. Watts: Yes, sir.

By Mr. Sparks:

Q. Proceed, sir.

A. In summary, Mr. Pena's testimony in Boston and, if I understand the scope of your inquiry, his conversations with us in interviews were to the effect that the communist operation was—

Mr. Watts: If Your Honor please, this is straight hearsay which he is now giving and it seems to me that whether it's for consideration by the Court or the jury, it is certainly not admissible. Your Honor has admitted into evidence on the question of pertinency Exhibit 1 which is the entire transcript of the hearing, including the matter which he is talking about now, but now he goes back prior to that time to discuss—

The Court: One of the exceptions, Mr. Watts, to the hearsay rule is that it may be given to explain conduct, as I understand it. Now, the witness is testifying to reasons for the committee calling for hearing in Atlanta and he [fol. 56] is testifying that the reason for that was that they had some information, certain information from Mr. Pena with respect to communist infiltration into industry in the South and that that was the underlying reason for calling the meetings here. Now, I think even though

that is hearsay, it is clearly admissible for showing the purpose of holding the meeting and the reasons for their actions and so forth.

Mr. Wafts: All right, sir.

The Court: You may proceed.

By Mr. Sparks:

Q. Go ahead, please.

A. Mr. Pena testified and gave us information in conferences in addition to his testimony to the general effect that with the movement toward industrialization of the South, the movement of textile industry to the South, development of industrial activities in the South, that the Communist party and the communist operation was intensifying its efforts in the South by sending into the South colonizers, propagandists, agitators, people who were communist who were carrying on communist activities in the South; that the information which he had on this subject he had derived from personal experience in the course of the then recent past in the Communist operation.

Q. Now, I'm going to ask you, what information did the committee have with reference to the activities of Mr. Wilkinson himself, the defendant on trial, prior to the time that he was subpoenaed to appear in Atlanta?

[Vol. 57] A. May I get clarification of your question? Do you mean immediately prior to the hearings or his past activities and record?

Q. No, sir. I mean the sum total of information that the committee had with reference to Mr. Wilkinson's activities.

A. Yes, sir. In essence the information of which the committee was possessed was that Mr. Wilkinson was a member of the communist party, that he had been identified by a creditable witness under oath before the committee a short time or within a year or so prior to the Atlanta hearings, identified as a Communist. It was also the information of the committee that Mr. Wilkinson had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South of a group known as the Emergency Civil Liberties Committee which itself had been cited by the Internal Security Subcommittee as a communist

operation or a communist front. It was the information of the committee that Mr. Wilkinson's assignments, including setting up rallies and meetings over the country for the purpose of engendering sentiment against the Federal Bureau of Investigation, against the security program of the government, and against the Committee on Un-American Activities and its activities, Mr. Wilkinson had in the course of the relatively recent past prior to his appearance in Atlanta been sent into Atlanta by the communist operation for the purpose of conducting communist activities in the South and more specifically in the Atlanta area. What I'm telling you now is only a general summary, you understand.

Q. Yes, sir. Now, did the committee originally plan to call Mr. Wilkinson as a witness at the Atlanta hearings or did information come to the committee which caused [fol. 58] them to subpoena him only a week before the hearing?

A. The latter is true, but may I explain just a little bit, if you please, sir. The committee knew that Mr. Wilkinson was actively engaged for some considerable period of time in communist work in the Emergency Civil Liberties Committee and in the various operations which I have described. The committee did not know specifically that Mr. Wilkinson was coming into the South, particularly in this area, in connection with his Emergency Civil Liberties Committee work. We had his agenda of other meetings which we had procured by our investigative processes, other meetings and other activities in which he was engaged over the country. It was only in the course, if my memory serves me correctly and I will have to be a little bit general on this, it was only in the course of a matter of a few weeks at the most, I believe, perhaps less than that, that the committee became aware of Mr. Wilkinson's presence in Atlanta and feel that it was desirable for him to be subpoenaed for the hearings which had been set for Atlanta prior to the time we gained knowledge of his visit here.

Q. Now, did you have information as to whom he was in Atlanta with?

A. Yes, sir.

Q. Who was that?

A. One of the persons with whom he was in conference here was a man by the name of Dombrowski.

Q. Is that Dr. James A. Dombrowski?

A. Yes, sir.

Q. What information did it have with reference to Dr. Dombrowski?

[fol. 59] A. The committee had the information that Mr. Dombrowski was, I don't recall his title, but he was the leader or one of the leaders of an organization known as the Southern Conference Educational Fund. The Southern Conference Educational Fund was the subject of investigations and hearings by the Internal Security Subcommittee of the Senate. In essence, the Internal Security Subcommittee of the Senate made a finding that the Southern Conference Educational Fund was for all intents and purposes—

Mr. Watts: If Your Honor please, I've been restraining myself on this. I suggest the witness has gotten his cases confused. Certainly Mr. Wilkinson has been charged with no relationship with Dr. Dombrowski or with the Southern Conference Educational Fund and certainly this discussion now has no relevancy whatsoever to the pertinency of the hearing, holding the hearing, or of subpoenaing Mr. Wilkinson before it.

The Court: As I understand it, Mr. Watts, the government contends that the subject matter under inquiry was the extent, character and object of communist colonization and infiltration in the textile and other basic industries located in the South, the Communist party propaganda activities in the South and the entry and dissemination within the United States of foreign Communist party propaganda. That is the general contention of the government as to the scope of the inquiry here in Atlanta. Now, as I understand Mr. Sparks' efforts here, it is to show that the committee did have information that would justify them in holding the hearing and that the purpose of the hearing [fol. 60] generally was to inquire into these matters. Now, I do not understand that it's offered as proof of any other fact other than the general information that the committee had, the scope of their inquiry and their reason for calling the Atlanta meeting. That is the only reason that this evi-

dence is being received, not as any evidence against this defendant directly at all, but simply as showing the subject matter under inquiry and the extent and scope of the meeting itself.

Mr. Sparks: I might say that I think the government is attempting also to show that the committee had reason to call this witness.

The Court: Yes, that goes to the scope of the inquiry, but it's not any evidence itself as to any guilt on the part of this defendant.

Mr. Sparks: No, sir.

The Court: It's simply their reasons for calling him in and asking the questions.

Mr. Sparks: That is true.

By Mr. Sparks:

Q. Continue about Dr. Dombrowski and the Southern Educational Fund, please.

A. I arrived at the point, I believe, sir, to say that the Southern Conference Educational Fund, of which Mr. or [fol. 61] Dr. Dombrowski was an official, and with whom we were informed Mr. Wilkinson was in conference. The Southern Conference Educational Fund was the subject of intensive investigation and study by the Internal Security Subcommittee of the Senate which found in essence that the Southern Conference Educational Fund was for all intents and purposes the successor organization to the Southern Conference for Human Welfare which had been repeatedly found by governmental agencies, including the House Committee on Un-American Activities and the Attorney General and the like, to be a communist operation, a transmission belt, I believe, of communist operations into the Southland.

Q. All right. Now, I will ask you this: Had Mr. Wilkinson been cooperative as a witness and had he cooperated with the committee, what lines of inquiry did you intend or would you have carried out with respect to these matters under investigation? What subject matters would you have explored with him had he been cooperative?

A. We would have first inquired of him—did inquire and were hopeful of answers respecting his own then pres-

ent affiliation with the Communist party directives which he may have received from the hierarchy of the Communist party respecting his operations in the Southland, more specifically, any directives or any activities which he was then engaged or which he had recently engaged or which he proposed to engage, infiltration in the textile industries, in the dissemination of communist propaganda, in the promotion in the Southland of communist fronts and creation of new fronts, organizing of groups, associations, all with the intended ultimate objective of acquiring a body of information which the committee could use in connection with [fol. 62] its surveillance over the administration and operation of existing internal security legislation and its consideration of proposed legislation then pending before the committee which I have already on this record, I believe Mr. Sparks, already alluded to.

Mr. Sparks: I believe that those are all the questions that I wish to ask him outside the presence of the jury. I would like to confer with the Court on the question of the determination of the actual pertinency to the statement of the chairman on the opening day.

The Court: It's already in evidence?

Mr. Sparks: Yes, sir, it's already in evidence. Now, there is one other matter that I wish to take up, if I may.

The Court: Before you go on from here, Mr. Watts, do you wish to cross-examine the witness?

Mr. Watts: Not out of the presence of the jury.

The Court: Very well.

Mr. Sparks: U. S. Exhibit No. 2 which the government tendered yesterday, which is the report, for the purpose of being submitted to the jury and the Court did admit it [fol. 63] for that purpose. I find, however, though in going through it, on Pages 4 and 5 and the top of Page 6 is the opening statement by the Chairman, Representative Francis E. Walter, made on the day prior to the time this defendant, Mr. Wilkinson, was in the Court. I find that the government does not have any evidence nor cannot prove directly that he actually was present and heard that statement. So I think to allow the entire record to go to the jury would be possibly error because the jury will be considering the question of pertinency, of awareness of pertinency and

if this opening statement by the chairman went out, which the government will not be able to prove that he actually heard, it would be unfair to the defendant and might cause a reversal.

The Court: It would not be any evidence, Mr. Sparks, on the issue of the knowledge of the defendant to the pertinency of the question propounded, but it might be relevant to the general question of the scope of inquiry and the issues thereto.

Mr. Sparks: That's true. That's what I was just calling to the Court's attention. While we do wish the particular testimony of Frank Wilkinson to go out with the jury, we want—

The Court: I will be glad to instruct the jury that on the issue of the knowledge of the defendant as to pertinency, no part of that record will be considered on that issue unless it's made to appear that at the time of the [fol. 64] occurrence related in the document that the defendant was present and had knowledge.

Mr. Watts: The defendant will be glad to stipulate that he was physically present at the time the chairman made that statement which is set forth there and did hear it and was aware of it.

Mr. Sparks: Very well. That eliminates that problem.

The Court: So far as the defendant is concerned, you do not make the point that he was absent at any time during the proceedings that are related in Government's Exhibit No. 2? You concede that he was present during that time?

Mr. Watts: That's right.

The Court: Not the effect, but the fact that he was present and heard it, do you concede that?

Mr. Watts: We concede that fact.

Mr. Sparks: That's all we have outside the presence of the jury, Your Honor.

The Court: Do you have additional evidence you wish to submit to the jury?

[fol. 65] Mr. Sparks: Two or three more questions in the presence of the jury and then I will turn him over for cross-examination.

The Court: Very well. Let the jury come back.

(The jury returned to the box.)

By Mr. Sparks:

Q. Mr. Arens, I believe when the jury went out you stated that Mr. Wilkinson had refused to answer the question which is charged in the indictment. I will ask you whether or not after he refused to answer, did you or not make an explanation to him of why the committee considered the question pertinent to the question under inquiry?

A. Yes, sir.

Q. Did he then answer the question?

A. No, sir.

Q. I will ask you if Mr. Willis, the Chairman, Congressman Willis, the chairman of the committee in your presence then made an additional explanation as to the pertinency of the question?

A. Yes, sir.

Q. Did Mr. Wilkinson then answer the question?

A. No, sir.

Mr. Sparks: You may examine.

[fol. 66] Cross examination.

By Mr. Watts:

Q. Mr. Arens, you testified yesterday that you were acquainted with Mr. Wilkinson, the defendant, and pointed him out in the Court room. When did you first become acquainted with him?

A. If by acquainted, when did I first lay eyes on him?

Q. That's right.

A. That was at some hearings held by the Committee on Un-American Activities at Los Angeles in December of 1956, if my memory serves me correctly.

Q. That's correct. Did Mr. Wilkinson appear before the committee in the Los Angeles hearings?

A. Yes, in response to a subpoena he appeared.

Q. Did he give testimony before the committee at that point?

A. He declined to answer questions at that point, if that's what you are undertaking to elicit from me.

Q. Isn't it true, Mr. Arens, that he made essentially the same statement of reasons for declining to answer questions at the hearings in December of 1956?

A. Yes, sir.

Q. Was he cited by the House for contempt as a result of his failure to answer questions in December of 1956?

A. No, sir.

Q. Do you know whether or not the committee recommended that he be cited?

A. No, and I'll be glad to tell you why, if you'd like to know.

[fol. 67] Q. Did the subcommittee recommend to the committee that—

A. No, sir. It was in December of 1956 and in order to cite a witness for contempt it is necessary for a quorum of the committee to be present. These hearings were then on the Coast. The new congress was coming in and we were without a quorum of the committee. We had a quorum of the subcommittee but not a quorum of the full committee.

Q. Mr. Arens, I show you Government's Exhibit 2, which is the proceedings taken by the House of Representatives against Frank Wilkinson and hand it to you to refresh your memory on what you then said. Will you look at Page 8? I call your attention to your statement in the first paragraph there that in explaining to Mr. Wilkinson why he had been subpoenaed, that the committee had information that he had come there for the purpose of developing a hostile sentiment to the committee and do its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. You are referring to the Atlanta hearings of the House Committee. "Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in a hotel in Atlanta." Now, that is your statement, is that correct?

A. That's a part of the statement, yes. That's probably a fourth of the statement.

Q. Yes. Well, the jury will have the entire statement before it. Now, there has been among the government's exhibits and by your own testimony, you stated that the purposes of the hearings in Atlanta were to go into the [fol. 68] extent, character and objects of communist colonization and infiltration in the textile and other basic industries located in the South, Communist party propaganda activity in the South, and then, as I recall, after some probing by counsel, you said, and entry and dissemination within the United States of foreign Communist party propaganda. I would like to know from you, Mr. Arens, to which of these three objects of the hearings did you as Staff Director of the committee consider the subpoenaing of—this paragraph, which I read, the top of Page 8, which of the three purposes of the hearing did this relate? You stated, Mr. Arens, that you had information that Mr. Wilkinson had come to stir up a hostile attitude toward the committee and if possible prevent the committee from holding hearings. Now, you subpoenaed him to testify therefor. Now, to which of these three specific purposes for which the hearings in Atlanta were held did this relate?

A. I'm not quite certain that I accept your premise there that we subpoenaed him—If I construe your question properly, I am not sure I accept your premise that we asserted or had at any time said that we subpoenaed him solely to interrogate him about his activities in stirring up sentiment against the committee.

Q. Isn't it true that you stated, "Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose, to stir up sentiment"?

A. Yes, that's part of the statement.

Q. And that "You were not subpoenaed to appear before this committee until you actually registered"?

A. That's right.

[fol. 69] Q. And that he came for the purpose of stirring up sentiment, is that right?

A. I beg your pardon?

Q. He came here in your opinion for the purpose of stirring up hostile sentiment?

A. It was our information that that was one of the activities in which he was engaged here and perhaps his principal activity, yes.

Q. Now, you stated in this statement that he was subpoenaed after you discovered he came for that purpose, is that correct?

A. Yes, sir.

Q. Now, I want to know what of these three categories of the purpose of the hearing generally, stirring up opposition and hostility to the House Committee saw in your opinion as Staff Director?

A. I have difficulty following you. When you allude to three purposes, could you direct my attention?

Q. The three purposes for which the subcommittee was holding hearings in Atlanta as testified by you yesterday were the extent, character and objects of communist colonization and infiltration in the textile and other basic industries located in the South. Two, Communist party propaganda activities in the South. Three, entry and dissemination within the United States of foreign Communist party propaganda in the South. You said yesterday—

A. Well, accepting the limitation that there were three purposes, and I think you will observe from the resolution there were many more than three purposes, they couldn't be so characterized or classified. I would say that his activity as reported to us would fall within the category of communist propaganda activity, but I cannot accept it on [fol. 70] this record, your characterization that the exclusive purposes were those three which you have just enumerated.

Q. They were the ones that you testified to yesterday, Mr. Arens. Now, you stated that in your opinion Mr. Wilkinson's arrival here for the purpose of stirring up hostilities to your committee was sufficient to justify a subpoena of him at this particular time?

A. I beg your pardon?

Q. Mr. Arens, you stated before the committee that Mr. Wilkinson had come to Atlanta to stir up hostility to the committee, that he was doing everything he could to prevent these hearings from being held in Atlanta?

A. Yes, sir.

Q. And that you did not subpoena him until you discovered that he had arrived here for that purpose?

A. That's correct, sir.

Q. Now, you state that within the three general categories under which the committee was holding hearings here of colonization in the textile industry, entry and dissemination of foreign propaganda and Communist party propaganda activity in the South, you are stating that Mr. Wilkinson stirring up hostility to the House Committee on Un-American Activities comes within the category of Communist party propaganda activity which justified the House Committee to subpoena him and question him, is that correct? I just want to understand your position.

A. Yes, in general I agree with you, yes. But I think I made it clear on this record that I am not accepting your major premise. I made that clear.

Q. I am summarizing them the way you summarized them yesterday. Certainly the record and exhibit, too, will show that the committee considered—

A. I don't want to appear to be quibbling with you. In general I agree with you.

[fol. 71] Q. These were a summary of the three categories in the resolution creating a subcommittee also, Mr. Areps?

A. No, sir. That's where I take issue with you.

Q. We are not quarreling on that.

A. In general I am in accord with your question and I answered it in the affirmative.

Mr. Watts: May I approach the bench, Your Honor?

The Court: Yes, sir.

(Counsel for the defendant and counsel for the government had a conference at the bench.)

Mr. Watts: No further questions.

The Court: Anything further for the government?

Mr. Sparks: Yes, sir. We would like to call Mr. Leonard Herndon for one or two questions.

(Witness excused.)

[fol. 72] LEONARD HERNDON, being first duly sworn, was examined and testified as follows:

Direct examination.

The Clerk: U. S. Exhibit for identification No. 16 is a subpoena served by the United States Marshal for the Northern District of Georgia.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 16 for identification.)

By Mr. Sparks:

Q. I show you U. S. Exhibit No. 16, sir, and ask you if you ever saw that before?

A. Yes, I have.

Q. What is that, sir?

A. It's a subpoena received in the marshal's office in July of 1958 from Washington.

Q. What is your position in the marshal's office, sir?

A. Chief Deputy Marshal for the Northern District of Georgia.

Q. Were you the Chief Deputy at the time you received that subpoena?

A. That's right.

Q. Did you serve it on the defendant named in that subpoena?

A. I did, at the Biltmore Hotel.

Q. On what date did you serve it?

A. July 23, 3:25.

Q. Do you see the defendant Frank Wilkinson on whom you served it?

A. Yes, sir. He is right over there.

[fol. 73] Mr. Sparks: We tender that in evidence.

Mr. Watts: No objection.

The Court: Admitted.

(The document referred to above, heretofore marked U. S. Exhibit No. 16 for identification, was received in evidence.)

Mr. Sparks: That is all.

The Court: Any questions for this witness?

Mr. Watts: Yes, sir.

Cross examination.

By Mr. Watts:

Q. Mr. Herndon, you testified that you served this subpoena on July 23, is that right?

A. That's right. 3:25 at the Biltmore Hotel.

Q. Do you know the approximate time of day?

A. 3:25 p.m.

Q. How long had you had the subpoena in your possession?

A. I received it on the morning of the 23rd from Washington by mail.

Q. Why was it not served sooner?

[fol. 74] A. Because I checked at the hotel and Mr. Wilkinson hadn't arrived at the hotel, and then when he did arrive I served him within an hour after he was at the hotel.

Mr. Watts: That is all.

Mr. Sparks: That is all.

(Witness excused.)

Mr. Sparks: If it please the Court, I apologize to the Court but I find that one of these documents that should have been in evidence, I just omitted to put it in. I am relatively unfamiliar with this. I would like to call Mr. Arens back for the purpose of identifying one document which I overlooked, sir.

The Court: Very well, sir.

The Clerk: U. S. Exhibit for identification No. 17 is a certified copy of the minutes of the meeting of the Committee on Un-American Activities, August 8, 1958.

(Thereupon, the document referred to above was marked U. S. Exhibit No. 17 for identification.)

[fol. 75]. RICHARD ARENS, recalled to the stand, testified further as follows:

Further direct examination.

By Mr. Sparks:

Q. Mr. Arens, when we were identifying these documents, I believe this one was overlooked. Would you look at U. S. Exhibit No. 17 and tell us what that is?

A. U. S. Exhibit No. 17 is a certification by Ralph Roberts, Clerk of the House of Representatives, and attached to the certification is a true and correct copy of the minutes of the Committee on Un-American Activities, the meeting of August 8, 1958.

Q. Were you present at that meeting, sir, of the committee?

A. Yes, sir.

Q. Was there a quorum present of the committee?

A. Yes, sir.

Mr. Sparks: I tender this in evidence, the recommendation of the full committee.

Juror No. 3: Your Honor, may I address the Court, sir?

The Court: Yes, sir.

Juror No. 3: This morning there has been some reference made to previous testimony of Mr. Arens that I for one do not recall having been brought before the jury.

[fol. 76] The Court: Very well, sir.

Mr. Watts: I have no objection to this, if Your Honor will instruct the jury to disregard other names that are contained in there.

Mr. Sparks: Yes, we are offering it only as to the name of Mr. Wilkinson.

The Court: It is admitted in evidence, and the jury is instructed that you will consider that document only as it applies to the defendant Frank Wilkinson who is the man on trial. Reference to any other parties has nothing to do with this case and has no probative value here and you will give no consideration to it.

(The document referred to above, heretofore marked U. S. Exhibit No. 17 for identification, was received in evidence.)

The Court: Now, in explanation to Mr. Thomas' remarks to the Court just now, I wish to state that there are certain issues in this case that the law makes it incumbent upon the Court to determine rather than the jury. Therefore, certain evidence has been introduced in the hearing of the Court and in the absence of the jury for the purpose of allowing the Court to determine the issues made by that evidence. Now, if any inadvertent reference is made to testimony that has not been delivered in the presence of [fol. 77] the jury, then you will disregard that because it is the opinion of the attorneys and the Court that the evidence that was received in your absence, would not be proper evidence for you to hear.

[fol. 78] The Court: I want to direct the attention of the jury to this fact: The defendant here is on trial under an indictment which charges him only with the failure to answer one question. That question being: "Are you now a member of the Communist Party?" and it will be necessary for you to determine the defendant's guilt or not guilty as to that question alone. Now, other questions were asked and answers to them were refused. They are admitted here for your consideration for the purpose of allowing you to determine the circumstances under which the inquiry was held, the scope of the inquiry itself, the circumstances under which the defendant refused to answer, [fol. 79] if he did refuse to answer, the questions propounded to him, bearing in mind the defendant is not on trial for refusing to answer any questions except the single question in the indictment. That question is: "Are you now a member of the Communist Party?"

So in considering the other portions of the record that was just read to you, you will bear in mind that the charge relates to that single question. However, you will be required to decide other issues that may be material too and you may consider it for those purposes, but not for the purpose of determining the guilt or not guilty of the defendant as to failing or refusing to answer any other question than the question charged in the indictment.

Mr. Sparks: I stated that I rested, and I do, but I think it should be stated into the record that counsel for the de-

defendant stipulated in open Court that Mr. Wilkinson was present on the morning of July 29, 1958 and did hear the opening statement made by the chairman of the subcommittee explaining the purposes. I just wanted to state that into the record.

The Court: Yes, it was so stipulated in open Court and the record will so show.

All right, Mr. Watts.

Mr. Watts: Your Honor, at this point I would like to make a motion.

[fol. 80] The Court: Ask the jury to retire to the corridor.

(The jury retired to the corridor.)

MOTION OF DEFENDANT FOR JUDGMENT OF ACQUITTAL

Mr. Watts: Your Honor, at this point the defendant moves that a judgment of acquittal be granted for the following reasons:

The government has failed to show that the subpoenaing of the defendant was for any purpose relevant to the specific investigation at Atlanta. The purpose as set forth in the resolution of the subcommittee is contained in Government's Exhibit No. 9, and as summarized by Mr. Arens on direct examination yesterday, was to investigate the extent, character, and objects of communist colonization and infiltration in the textile and other basic industries in the South.

Now, there has been no allegation in any manner that the defendant was charged with being involved in that in any manner or form.

The second subject was communist party propaganda activity in the South, and I will return to that in a moment, if I may.

The third was entry and dissemination within the United States of foreign communist party propaganda. Now, there has been no suggestion in the record or the testimony that the dissemination of foreign propaganda was a subject under which Mr. Wilkinson was being interrogated. Mr. Arens has placed the purpose of subpoenaing the de-

defendant on the second ground, communist party propaganda activity in the South. However, I submit that in Government's Exhibit 2, on page 8, Mr. Arens stated before the committee that the purpose of subpoenaing Mr. [fol. 81] Wilkinson was because he had come to Atlanta to develop a hostile sentiment to the House Subcommittee and to bring about pressure, to prevent, if possible, the holding of the subcommittee hearings in Atlanta.

We submit, Your Honor, that on this record the real purpose of subpoenaing Mr. Wilkinson was to harass him because he was opposed to the committee. We submit that if he was carrying on as alleged an intensive campaign to develop hostile sentiment to the subcommittee or the House Un-American Activities Committee and tried to prevent them from holding hearings down here, it was his privilege and it was immaterial motivation he had.

Certainly to subpoena him to testify because he was down here for that purpose was not pertinent to it, the purposes set forth in the resolution setting up the subcommittee, setting up the Atlanta hearings.

In the second place, we feel that the government had failed to show that there was sufficient authorization either to the house committee or to the subcommittee to entitle it or authorize it to use compulsory process because of the very vagueness and breadth of the congressional purported grant in the House committee's mandate itself and in the subcommittee's authorization to conduct hearings in Atlanta. As was pointed out in the Watkins decision last year, the responsibility of Congress to insure that compulsory process is used only in furtherance of legislative purpose requires that the instructions to an investigating committee spell out what group's jurisdiction is and purpose with sufficient particularity. No witness can be compelled to make disclosures on matters outside of that area.

We suggest that there was not spelled out so far as this defendant is concerned with sufficient particularity [fol. 82] the basis for him being subjected to compulsory process.

Now, what does the committee itself, concede its area of investigation to be? Your Honor, the government in-

troduced into evidence Exhibit 15 yesterday which is a bill which was introduced in Congress, House Resolution 9937, and Mr. Arens gave a summary of what he called some of the highlights of this bill. I suggest in passing that this bill which was only introduced last week, January 13, is a self-serving ex post facto document, perhaps, but I think it is significant in that it shows in itself and in Mr. Arens' summary what he says were mere highlights that the House Un-American Activities Committee conceives of its scope and authority is so broad that it can recommend legislation and, therefore, investigate for the purpose of recommending legislation in the whole realm practically of government operations.

I suggest that Mr. Arens and the committee is doing a little colonizing of their own, invading some of the jurisdiction of other committees of Congress. But I suggest in seriousness that the committee's own interpretation of its mandate renders it so broad in breadth and so bad that it does not and cannot authorize compulsory process such as to "render the defendant liable to a prosecution for failure to answer." However, whatever the area of the house committee's mandate, it is certainly undoubtedly true that as spelled out, it invades the first amendment area. In brief, the house committee in its mandate is supposed to investigate un-American propaganda activity and the diffusion of subversive and un-American propaganda for the purpose of recommending legislation in these areas. [fol. 83] Now, we come again to what kind of propaganda activity the defendant was allegedly carrying on that subjected him to this subpoena. Well, he was carrying on activities against the committee itself in opposition and we suggest that certainly Congress could not validly enact legislation controlling propaganda and public agitation for the abolition of any of its committees. This is a right that Congress wouldn't dream, I hope, of taking away from all.

I am reminded that in the 1930's the Congress adopted a notorious guide rule which guides itself and guided its debate on the question of slavery. John Quincy Adams carried on a valiant fight on the floor of Congress against this and finally he was cited by the house committee, but he was a member of Congress and even in those days on

this issue there was no attempt to guide the general public on a matter which would properly be presented to the Congress for consideration. I don't think Congress intended this, to give the house committee this authority as it was stated in the Yates case of last year, 354 U.S. We should not assume that Congress chose to disregard a constitutional danger zone so clearly marked and I believe that this committee has exceeded its authority in the subpoenaing of Mr. Wilkinson for this purpose. If we do not reach the question of whether the mandate is constitutional, we certainly reach the question of whether or not it is in this danger zone of the first amendment. The committee and subcommittee has exceeded its powers in this instance. We must assume that otherwise there would be no limits. Mr. Arens could have me subpoenaed for appearing here today and participating in this case. There would be utterly no limit to the realm in which the committee could [fol. 84] go and take a census of the population on their views concerning the validity of the committee itself.

My third point is that if the Congress intended to give the committee such goal and if this Court determines that the mandate is not defective by reason of vagueness, we submit that the authority as here applied to answer the question recited in the indictment violates the first amendment. The Supreme Court has said in the Watkins case that the Congress shall make no law abridging freedom of speech or the press or assembly. Certainly, if Congress has made a law setting up a committee to investigate propaganda activities, it has made a law abridging freedom of the press, assembly and speech.

I suggest further that the mandate is unconstitutional because it invades the area which has been protected for the people under the ninth amendment of the Constitution. And finally I suggest that the entire record clearly shows that the sole purpose of subpoenaing Mr. Wilkinson was to subject him to personal harassment. Mr. Arens has testified that Mr. Wilkinson was subpoenaed in California in December 1956. He appeared before the committee and in effect took the same position that he took here last July. There was no suggestion in the record that Mr. Wilkinson had done anything further in the interim other

than carry on activities against the house committee to cause him to be brought before the committee a second time. The committee had no reason to believe that Mr. Wilkinson would take any other position than what he had done before in the first instance and, therefore, the committee had no reason to believe that it would secure any information concerning the subject under investigation [fol. 85] which would be of any value to it in preparing legislation. This we think is a valid basis for granting the judgment of acquittal. However, the defendant has asked me to specifically present to this Court that our fundamental position is the mandate of the house committee is defective because it is an encroachment upon violation of the first amendment.

The Court: The Court will overrule the defendant's motion for a judgment of acquittal and let the record so show.

Let the jury come back.

(The jury returned to the box.)

The Court: Proceed, gentlemen.

Mr. Watts: The defense rests.

The Court: Anything further for the government?

Mr. Sparks: No, sir.

The Court: The evidence is closed. We will not start argument on the case before noon.

Gentlemen of the jury, during the noon recess you will be very careful to observe the instructions that I gave you last night and do not undertake to reach any decision in the case or to consider it at until after you have heard the [fol. 86] argument of counsel and the charge of the Court with respect to the law.

(A luncheon recess was had.)

The Court: Let the argument proceed.

OPENING ARGUMENT ON BEHALF OF PLAINTIFF

Mr. Sparks: I promise this opening argument is going to be brief. This is the first opening argument I made in years, unless I was in another case with counsel where one took the opening and one took the conclusion.

You heard the evidence in this case. Of course, a good bit of it took place outside of your presence, but you have heard the testimony read to you as best I could read it with a bad cold. As I said in the beginning, I would attempt to prove that this defendant Wilkinson wilfully failed to answer that question; "Are you now a member of the Communist Party". I think that all of the evidence shows conclusively that he did wilfully fail and refused to answer this question.

Now, I think the wilfulness is shown in this way. There are approximately eight pages of testimony which have been read to you of what occurred when he testified before the House Un-American Activities Subcommittee here in Atlanta, although only one question is charged, the failure or refusal to answer one question is the only charge in the indictment. The Court has instructed that the entire testimony of all of his testimony before this committee, or rather his lack of testimony before this committee has been admitted for the sole purpose of allowing you to [fol. 87] determine if it shows, at all whether his refusal to answer this question was wilful. And I can say that in the opinion of the government and based on the evidence, the entire record shows that it was completely wilful because he not only did not answer the question with which he is charged in the indictment, but he did not answer any question at all, with the exception of identifying himself by name, which is really not answering a question. He wouldn't even give his residence, the second question, before he was even asked as to whether or not he was a member of the Communist Party. Throughout it is wilful, completely wilful. His entire attitude shows a wilful refusal to answer that question. His entire attitude that is expressed throughout his testimony, his answers to the questions, the repeated orders which were made to him show that.

Now, when we went into the trial of this case I told you that I thought so far as the government knew at that time that we had only two burdens to carry. One was to prove that the refusal to answer was wilful and, secondly, that the refusal to answer was not justified on the ground that the question was not pertinent and that he did not

have sufficient knowledge to determine whether or not it was pertinent. In other words, the two questions you are to decide in this case are, was his refusal wilful and, secondly, did he know or should a reasonable man in his position have known that the question which was asked him and which he refused to answer was pertinent.

I point out to you that you will have this exhibit out with you, U. S. Exhibit No. 2. I ask you to just start at the beginning of his testimony if you are in any doubt and look at page 7 where Mr. Arens for two pages explains to him the legislative proposals that were pending before [fol. 88] the committee, informs him that he himself had been designated as a hard-core member of the Communist Party, that he was designated by the Communist Party for the purpose of manipulating and creating organizations, that he was sent to this area by the Communist Party for the purpose of developing a hostile sentiment toward the committee and to prevent the committee from holding the particular hearings here in Atlanta, Georgia.

Then he went on further, midway of page 8, and said that if you will tell us whether or not you are now a Communist, then he went on and told him what other questions he intended to ask him respecting his activities as a Communist, which is tied up directly with the Kremlin, his activities from the standpoint of propaganda. The information of the committee was that he was down here to create hostile sentiment at Atlanta, Georgia, out here at the Biltmore Hotel. How could anything be pertinent, more pertinent to the investigation of communist propaganda in the South. This is a very brief opening statement, but those are the two things that we set out to prove. I submit that we have proven them beyond and above any shadow of a doubt.

I also direct your attention to the fact that it was stipulated by the defendant that he was present on the first day of the hearings which was on July 29, and on that date he, Representative Walter, on page 4, made a full statement, opening statement as to the purpose of the committee. That runs from page 4 through page 6. I didn't bother to read that to you, but it is stipulated that he was present and listened to Congressman Walter who explained

the purpose of this committee. I suggest that you read that opening statement when you get out in the grand [fol. 89] jury-room. Have your foreman or one of your members read it to you aloud, beginning on page 4. That's another explanation of the pertinency and purpose of these hearings. We say that upon the facts here as submitted that the government has completely proven its case and that the defense has not produced any defense at all. We don't think that this issue has been controverted in any manner and we ask you for a verdict of guilty. I will have more to say after Mr. Watts finishes his argument.

OPENING ARGUMENT ON BEHALF OF DEFENDANT

Mr. Watts: Gentlemen of the jury, we are sorry that we have honored you more by your absence from this trial than your presence, permitting your presence in the Courtroom. This has been necessitated by the extremely complexity of the question involved. The Court will advise you on the law. That is not our function or prerogative. We give you this by way of explanation and I hope that you will give very careful consideration to the factual determination in terms of the legal situation presented to you by the Court.

As stated in the opening before you at the beginning of the trial by Mr. Sparks for the government, the question of whether or not the defendant is a Communist is clearly not at issue. The allegations in this Government Exhibit 2 as to the purpose for which Mr. Wilkinson, the defendant, was here and the purpose for which the committee was subpoenaing him are the statements of Mr. Arens, the staff director of the committee. It was his opinion they were certainly pertinent for your consideration in determining whether or not Mr. Wilkinson was aware of what the committee claims it was trying to do. They are not relevant [fol. 90] to the question of what Mr. Wilkinson was doing or why he was doing it.

Now, Mr. Arens testified that Mr. Wilkinson was subpoenaed to appear before the house committee on Un-American Activities in December 1956 in Los Angeles, California. He did appear and at that point he refused

to answer any questions other than giving his name, identifying himself, propounded by the committee. The reasons for his refusal at that time are set forth in his answer in this hearing of last summer on the lower part of page 9 of Government's Exhibit 2. I urge you to consider it very carefully because it is clear that his refusal to answer rather than in contempt of Congress was in support and high regard for the true purposes of the Congress.

Now, if he is mistaken in his legal right in this situation, this is something which the Court will advise you on. However, his mistake goes in part; if it is a mistake, goes in part into the question of his motivation and to the question of his wilfulness in being in contempt of Congress, if he was in contempt of Congress.

Now, Mr. Arens testified that Mr. Wilkinson took the same position in December 1956. Now, there is nothing in the record to indicate that the subcommittee of the house committee which held these hearings in Atlanta last July had any information to indicate that Mr. Wilkinson had changed his views on the authority of the committee to ask these questions. There is nothing in the record to show that Mr. Wilkinson was in any different position now than he was in December '56. Therefore, there was no legitimate purpose in calling Mr. Wilkinson at this time because there was no indication that he had any information to contribute to the committee in support of a valid legislative purpose.

Mr. Arens testified and the marshal testified and you will find Mr. Arens' statement on page 8 of Government Exhibit 2 as to why Mr. Wilkinson was subpoenaed before this committee in Atlanta last July. Mr. Arens stated to the committee and he verified it here that Mr. Wilkinson was subpoenaed because he was hostile to the House Committee on Un-American Activities and he was trying to prevent if possible these hearings being held in Atlanta. Now, I submit to you hostility to the House Committee on Un-American Activities or the Appropriations Committee or the Government Committee on Civil Rights or any other committee of the Congress is not any basis for determining that a person is motivated or directed by the Communist Party which would have been the only possible excuse

under which Mr. Wilkinson could have been subpoenaed. We suggest that the purpose for which Mr. Wilkinson was subpoenaed was to harass him because of his continued admitted aggressive opposition to the continuing function of the house committee. The Court will advise you on the law in this case. We believe that under these circumstances you must find the defendant, Mr. Wilkinson, not guilty. Thank you.

Mr. Sparks: I have just one or two comments in conclusion. I am not going to try to make a long speech because I think the issue is very clear. But I do want to emphasize the fact which I think was touched upon by my learned opponent, Mr. Towland Watts, and that is that it is not the function of this jury to determine whether or not the questions were pertinent. Judge Sloan has that [fol. 92] duty and Judge Sloan will charge you with respect to what findings he has made as to whether these questions were pertinent. The only question that will be submitted to you with reference to pertinency is, was pertinency made sufficiently clear to the defendant, Mr. Wilkinson, at the time he refused to answer the question.

I want to comment just a minute on the somewhat vague assertion that Mr. Watts had made about the fact that he was subpoenaed here in mid-summer of 1958 because he refused to testify in 1956, December 1956. Mr. Watts seems to argue in this case that simply because a man doesn't talk in 1956 or refuses to talk in December of 1956, that 18 months later there is no chance that he might talk. In a very recent case, if it please the Court, decided by the Supreme Court only about three weeks ago, I believe it was the Thrasher case, the Supreme Court held that a witness can change his mind within ten days. A reluctant witness ten days from now may not be reluctant any longer. Eighteen months has intervened between the time this man refused to testify out there in California and the time he was brought in here. Mr. Watts appeared to me to argue that simply because he wouldn't tell them anything in 1956, that there is no possible reason they should call him in 1958.

I pose this question to the jury: What has he been doing in the preceding 18 months? Don't you think the committee

might have some curiosity about that, assuming he were willing to talk now?

Mr. Watts wound up by saying—I wrote it down in my scrawling handwriting and I think I got his quote exactly right—he suggests to this jury that the only reason he was called in here was to harass and because of his “ad- [fol. 93] mitted aggressive opposition to the committee.”

Now, he is saying the committee is harassing him by calling him, but his admitted aggressive opposition probably hadn't been harassing the committee. What's sauce for the goose is sauce for the gander. But I submit to you, gentlemen, there is no indication here he was called in for the purpose of being harassed. The committee didn't ask him to come down here to Atlanta, Georgia. He was subpoenaed right out here in the Atlanta Biltmore Hotel one week before these hearings were to start and counsel concedes, it seems to me, in his argument that maybe he was down here for the purpose of opposing the committee. He came down here and put himself available for the purpose of opposing the committee and I say it was a perfectly legitimate legislative function for the committee to subpoena him in before them in order to find out if he was spreading propaganda, which was one of the things they were investigating, communistic inspired propaganda in the South.

If he were down here trying to create a hostile sentiment, what on earth could that be but hostile propaganda, which is just what the committee was investigating. I know you all are tired. The case lasted almost a day. I am going to close now. The evidence in this case is open and shut in my opinion, in the opinion of the government and there should be no reasonable doubt whatsoever in the minds of any member of this jury that this defendant is guilty as charged and I ask you based on the evidence and in the name of the United States to bring in a verdict of guilty in this case.

[fol. 94]

CHARGE TO THE JURY

The Court: Members of the Jury, now that you have heard the evidence and the argument of counsel, the time has come to instruct you as to the law governing the case.

Although you as jurors are the sole judge of the facts, you are duty bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law, regardless of any opinion that you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the not guilty plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by any sympathy, prejudice or public opinion. The accused and the public expect that you will carefully and impartially consider all the evidence, follow the law as stated by the Court and reach a just verdict regardless of the consequences.

Now, the law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a clean slate; with no evidence against him, and the law permits nothing but legal evidence presented before the jury to be considered in support of any charge [fol. 95] against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case.

A reasonable doubt is a fair doubt based upon common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs.

The defendant is not to be convicted on mere suspicion or conjecture. A reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence, since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every

essential element of the crime charged. The defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon the evidence brought out on cross examination of the witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence. A reasonable doubt exists in any case when after a careful and impartial consideration of all the evidence the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge.

Now, of course an indictment is just a formal method of accusing a defendant of crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

The defendant is charged in this case in the indictment with a violation of a federal statute. That is Volume II, [fol. 96] U. S. Code, Section 192, making it unlawful for anyone to refuse to obey proper command of either house of Congress or any of its committees to appear and give testimony or to produce papers. The offense charged is frequently referred to as contempt of Congress, but it does not involve any personal animosity or dislike for a congressional committee or for any of its members, nor does it require any discourteous conduct on the part of the witness.

The statute provides that every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry wilfully makes default or who having appeared refuses to answer any question pertinent to the question under inquiry shall be deemed guilty of a misdemeanor punishable as provided by the statute.

The charge made against the defendant rests solely on the second part of the statute which makes it unlawful for a person appearing before Congress to refuse to answer any question pertinent to the question under inquiry.

Now, I have decided those matters which it is my responsibility to determine. You are not concerned with whether the committee had a right to ask the questions or

why it asked them. You are not concerned with whether this defendant was or was not a communist or a subversive or what his answer might have been, and you are not concerned that his failure to answer may even have been upon the advice of counsel or his lawyer. In this connection you are to decide merely whether he intentionally refused to answer without regard to any motive that he may have had. Such refusal does not require either evil (RJM) [fol. 97] intent or bad motive. Therefore, good motive is no defense. Even in refusing upon advice of counsel is not reason or justification. You are not to consider the validity of the objection made by the defendant to answering the question concerned in this indictment or whether the claimed invalidity of the committee, lack of jurisdiction of the committee or lack of pertinency of the question, because these are matters for my decision and I have decided as a matter of law that the committee was properly authorized by Congress, that the questions were pertinent to the subject matter under investigation and that the objections he made and the reasons he gave do not justify refusal to answer these questions. I will have more to say later about what constitutes intentional refusal to answer.

Now, I have determined as a matter of law and I instruct you that the committee on Un-American Activities was during all times material here a valid committee of the House of Representatives and had the power to conduct this hearing and to conduct it through a subcommittee. Chairman Walter had the power to appoint a subcommittee of three or more members of his committee to conduct this hearing and to hear the testimony of this defendant.

You will note that the indictment alleges that the refusal was with reference to a question pertinent to the matter under inquiry. You will not concern yourselves with this allegation as it involves a matter of law which it is the Court's duty to determine and which has been determined. I have determined as a matter of law that the committee had the right to ask this question and the defendant had the duty to answer this question under the conditions that I will later explain.

[fol. 98], With these matters of law out of the way, the first question for you to decide is whether Mr. Walter, the Chairman of the Full Committee, designated Congressman Willis, Tuck and Jackson to constitute a subcommittee to hear the testimony on the occasion when the defendant allegedly appeared before it on July 30, 1958. You will further decide whether those Congressmen undertook to act as such subcommittee and whether at least two members of such subcommittee were actually present throughout the testimony of the defendant. If you so find beyond a reasonable doubt, as I have defined that term to you, then the Court instructs you that this was a validly constituted subcommittee of the Un-American Activities Committee of the House of Representatives and as such had authority then and there to ask the question alleged in this indictment.

The next question for you to determine is whether the defendant appeared before the subcommittee in this district on or about July 30, 1958. I do not understand that some of these matters are contested, but here you must nevertheless find them beyond a reasonable doubt before you may convict the defendant. Then you must determine whether the subcommittee or its staff director asked the particular question charged in the indictment. Here again I do not understand that this was contested, but you must nevertheless find that the question was asked and make this finding beyond a reasonable doubt before you can convict the defendant. If you find beyond a reasonable doubt that this question was asked the defendant, as I have already said, it becomes the witness' duty to answer and to answer by giving a reply responsive to the [fol. 99] question under the conditions which I will explain to you.

Now, you are next to determine whether the defendant failed to make an answer to the question charged in the indictment. Here again I do not understand that this is contested, nevertheless you must find beyond a reasonable doubt that the defendant did fail to answer the question before you can convict him. Now, if you so find that there was such a failure to answer, you will then determine whether it was wilful failure, and, therefore, a refusal as

charged in the indictment. The word wilful does not mean that the refusal or failure to comply must necessarily be for evil or malicious purposes. That is beside the point. The reason for the refusal is immaterial so long as the refusal was deliberate and intentional rather than mere accident or oversight or inadvertence or the result of a misunderstanding.

Now, I have already said that merely because the defendant may have misunderstood his right and may have thought that he had the right to refuse to answer because of the advice of counsel or for some other reason, that wouldn't be the type of misunderstanding that I have in mind. The kind of misunderstanding that I have in mind is a situation where he didn't understand that he was required to make an answer, that it hadn't been brought home to him that the question was pertinent or that the subcommittee had overruled his objections and expected him to answer, notwithstanding his objections, or where a failure to answer was due to a misunderstanding of the question itself. If you believe beyond a reasonable doubt that the defendant refused to answer the question alleged in the indictment and that that refusal was intentional and deliberate [fol. 100] after a clear demand by the Subcommittee to answer, notwithstanding his objection, then that aspect of the proof of the case would be satisfied.

Now, to summarize what I have just said, a witness who fails to answer after making an objection must be informed by the subcommittee that his objection or reason for not answering was not accepted by the subcommittee and that demand is made upon him to answer notwithstanding his objection. In simple language, the law requires that the witness finally be given a choice to answer or refuse to answer after his objections have been made.

Now, in this case the government contends that the subject matter under inquiry was the extent, character and object of communist colonization and infiltration in the textile and other basic industries located in the South, communist party propaganda activity in the South, and the entry or dissemination within the United States of foreign communist party propaganda. If you find beyond a reasonable doubt that the subject matter under inquiry by the sub-

committee at the time the defendant appeared before it was as the government contends and that the question that the defendant allegedly refused to answer was either related to that subject matter was with S/(JJM) undisputed clarity from the wording of the particular question, or from the course of the entire questioning of this defendant, or both, or if you find that the subcommittee made an explanation reasonably capable of describing to the ordinary person in the defendant's situation what the subject matter under inquiry was and the way the particular question related to it, then this final aspect of the criminal intent involved in this charge would have been found as to the refusal to answer that question.

[fol. 101] Now, to summarize with respect to the criminal intent involved in this offense, the refusing to answer the question, the law requires that a witness stating an objection to answering must be given an opportunity by the subcommittee to make a deliberate final choice whether to answer or not and that choice to answer or not must be an informed choice of the sort I have just mentioned.

I have given you the necessary elements of the offense charged in this indictment which involves questions of fact to be decided by you. Now, I am briefly summarizing them.

First, the offense if committed took place in this district.

Second, that a subcommittee was designated by the chairman consisting of three members and that at least two members thereof met on the date charged in the indictment and were present throughout the testimony of this defendant.

Third, that the defendant appeared before said subcommittee on that date.

Fourth, he was asked the question specified in the indictment.

Fifth, that he wilfully refused to answer this question after having been directed to do so.

Sixth, that the subject matter under inquiry and the relationship or pertinency of that question to that subject matter would have been clear to the average person in the defendant's position.

Consider the indictment and if you find every one of these factual elements which I have left for your consideration to exist and you find that beyond a reasonable doubt, it would then be your duty to convict the defendant. If you do not so find or if you have a reasonable doubt about any [fol. 102] one of these factual elements, you must give the defendant the benefit of that doubt and acquit him.

Now, the particular indictment in this case, gentlemen of the jury reads as follows:

On July 30, 1958 in the Atlanta Division of the Northern District of Georgia a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings pursuant to Public Law 601, Section 124, 79th Congress, Second Session, 60 Statute At Large, Page 828, and to House Resolution 55, 85th Congress. Defendant Frank Wilkinson appeared as a witness before that subcommittee at the place and on the date above stated and was asked a question which was pertinent to the question then under inquiry. Then and there the defendant knowingly, willfully and unlawfully refused to answer that pertinent question, to wit: "Are you now a member of the Communist Party".

Now, as I have instructed you, you are to determine the guilt or not guilt of this defendant as to that question and that question alone.

Now, you take the case, gentlemen, with no desire to do other than the right thing. Apply to the facts as you find them to be the law that the Court has given you in charge and decide what the truth of the case is and when you have decided it, let your verdict speak the truth. If you find the defendant guilty, the form of that verdict will be: We the jury find the defendant Frank Wilkinson guilty. If you find him not guilty, the form of that verdict will be: We the jury find the defendant Frank Wilkinson not guilty. Whatever your verdict, you will enter it on the form prepared by the Clerk, date it and let your foreman sign it and return it into Court. You may retire just outside [fol. 103] the Courtroom door and await further instructions.

(The jury retired to the corridor.)

The Court: Any exceptions to the charge, gentlemen?

Mr. Watts: No, Your Honor.

Mr. Sparks: No, sir.

The Court: Give the documentary evidence to the jury.

[fol. 109]

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON APPEAL—Filed May 8, 1959

The appellant intends to rely upon the following points on appeal:

1. The statute and resolution establishing the Committee are unconstitutional on their face and as applied to appellant in that they invade appellant's constitutional rights under the First Amendment in respect of his freedom of speech, political and other association and communication; under the Fifth Amendment in that they provide a constitutionally vague and incomplete standard for inquiry and prosecution; under the Sixth Amendment in that they fail to inform him of the nature and cause of the accusation made against him; and under the Ninth and Tenth Amendments in that they invade rights and powers retained by the people and reserved to the people.

2. The legislative inquiry and the resulting conviction were unconstitutional and unlawful because of an unlawful purpose to expose appellant.

Rowland Watts, Attorney for Appellant.

[fol. 112]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—

October 7, 1959

(omitted in printing)

[fol. 413]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17723

FRANK WILKINSON, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the
Northern District of Georgia.

OPINION—December 14, 1959

Before: Hutcheson, Cameron and Jones, Circuit Judges.

JONES, Circuit Judge:

It is provided, among other things, by Rule XI of the
House of Representatives that:

"The Committee on Un-American Activities, as a
whole or by subcommittee, is authorized to make from
time to time investigations of (i) the extent, character,
and objects of un-American propaganda activities in
[fol. 414] the United States, (ii) the diffusion within
the United States of subversive and un-American
propaganda that is instigated from foreign countries
or of a domestic origin and attacks the principle of
the form of government as guaranteed by our Con-
stitution and (iii) all other questions in relation there-
to that would aid Congress in any necessary remedial
legislation."

A Subcommittee of the Committee on Un-American Activi-
ties scheduled hearings in Atlanta, Georgia. At the open-
ing session on July 29, 1958, Representative Francis E.
Walter, Chairman of the Committee presided and made a
statement which included the following:

"The hearings which begin today in Atlanta are in furtherance of the powers and duties of the Committee on Un-American Activities, pursuant to Public Law 601 of the 79th Congress, which not only establishes the basic jurisdiction of the committee but also mandates this committee, along with other standing committees of the Congress, to exercise continuous watchfulness of the execution of any laws the subject matter of which is within the jurisdiction of the committee.

"In response to this power and duty, the Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

"In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

"The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Krem-

lin on American soil. Most of the Communist Party operation in the United States today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism."

The appellant, who had been subpoenaed as a witness, appeared at the hearing on July 30, 1958, was sworn as a witness, answered a question as to his name and was asked (fol. 116) to state his residence and to give his occupation. His response was, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee." He stated that he was not represented by counsel but knew that he had the privilege of counsel. He was next asked, "Are you now a member of the Communist Party?" His answer again was, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this Committee". At this point the Committee's Staff Director undertook to state the reasons for and pertinency, and relevancy of the question asked and other questions to be asked. Because the pertinency and relevancy of the question is a major issue on the appeal, it seems desirable to set forth the Staff Director's statement in the margin.¹ The appellant again refused to answer the ques-

"Now, sir, I should like to make an explanation to you of the reasons, the pertinency, and the relevancy of that question and certain other questions which I propose to propound to you; and I do so for the purpose of laying a foundation upon which I will then request the chairman of this subcommittee to order and direct you to answer those questions.

"The Committee on Un-American Activities has two major responsibilities which it is undertaking to perform here in Atlanta.

"Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal security laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

"Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

"There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Com-

[fol. 117] tion. The statement of the Staff Director was followed by a supplemental statement of Representative Edwin E. Willis, Chairman of the Subcommittee, who ordered and directed the appellant to answer whether he was a Communist. There was this response, "I am refusing to answer any questions of this Committee." Further explanations by members of the Committee or its Staff Director were made; further questions were asked which the appellant was ordered to answer; and these were met by the reiterated statements of the appellant that he was answering no questions of the Committee.

Communist Party and the Communist conspiratorial operations in the United States. H.R. 9937, is one of these. Other proposals are pending before the committee not in legislative form yet, put in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

"Now with reference to pertinency of this question to your own factual situation, may I say that it is the information of this committee that you now are a hard-core member of the Communist Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee, including a particular committee in California and a particular committee in Chicago, a committee—the name of which is along the line of the committee for cultural freedom, or something of that kind. I don't have the name before me at the instant.

"It is the information of the committee or the suggestion of the committee, that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its works for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

"Now, sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we intend to

[fol. 118] The reasons of the appellant for his refusal to answer any of the Committee's questions were given by him at the Committee hearing in the following statement:

"I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

"I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it [fol. 119] cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, where-

pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Communist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation, and the Committee on Un-American Activities, because indeed this committee issued a report entitled 'Operation Abolition,' in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light to destroy the F.B.I. and discredit the director of the F.B.I. and to undertake to hamstring the work of this Committee on Un-American Activities.

"So if you will answer that principal question, I intend to pursue the other questions with you to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States of America under whose flag you, sir, have protection.

"Now please answer the question: Are you now a member of the Communist Party?"

in it cannot legislate and therefore it cannot investigate.

"I am, therefore, refusing to answer any questions of this committee."

The appellant was indicted, tried, convicted and sentenced for his refusal to answer the question "Are you now a member of the Communist Party?" The appellant asks us to reverse his conviction. On May 8, 1959, the appellant filed a Statement of Points on Appeal, saying that he intended to rely on the following:

"1. The statute and resolution establishing the Committee are unconstitutional on their face and as applied to appellant in that they invade appellant's constitutional rights under the First Amendment in respect of his freedom of speech, political and other association and communication; under the Fifth Amendment in that they provide a constitutionally vague and incomplete standard for inquiry and prosecution; under the Sixth Amendment in that they fail to inform him of the nature and cause of the accusation made against him; and under the Ninth and Tenth Amendments in that they invade rights and powers retained by the people and reserved to the people.

"2. The legislative inquiry and the resulting conviction were unconstitutional and unlawful because of an unlawful purpose to expose appellant."

[fol. 120] These are entirely in keeping with the appellant's position at the hearing. Subsequent to the taking of the appeal in this cause but before briefs were filed, the opinion in the Barenblatt case² was rendered and a conviction was affirmed for refusal to answer questions of a subcommittee of the House Un-American Activities Committee, including the question, "Are you now a member of the Communist Party?" The same contentions were made in the Barenblatt

² Barenblatt v. United States, 360 U. S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115.

case as are urged here, and there they were resolved against the position asserted by the appellant. It will follow, therefore, that unless there be something in the case before us to distinguish it from *Barenblatt*, our decision must be an affirmance.

The defendant in the *Barenblatt* case was a college professor and an inquiry was being undertaken into Communist infiltration into education. The appellant here admitted that he was engaged in aggressive opposition to the continued functioning of the Committee. The Committee had been informed that the appellant was a hard-core Communist, and he was attempting as a Communist activity to develop hostility to the Committee and its investigations; hence it was within the province of the Committee to make inquiries to ascertain whether Un-American Communist influences were attempting to weaken the Government by impeding and crippling the operation of its legislative branch. As was said in the *Barenblatt* opinion, " . . . in pursuance of its legislative concerns in the domain of 'national security' the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country". 360 U. S. 109, 118. Included in that pervasive authority is the power to investigate activities directed to interference with the legislative processes and their functioning. The Congress is not prohibited by the First Amendment guaranty of the right to petition the Government for redress of grievances from exercising measures of self-protection in requiring disclosures of lobbying activities. *United States v. Harriss*, 347 U. S. 612, 74 S. Ct. 808, 98 L. Ed. 989. Since legislation in the area may be enacted, investigations by legislative agencies is authorized.

The activities in which the appellant was believed to be participating presented a more direct threat to the national security than those of which *Barenblatt* was suspected. The decision in the *Barenblatt* case is controlling here. The judgment of the district court is Affirmed.

[fol. 122]

IN UNITED STATES COURT OF APPEALS

No. 17723

FRANK WILKINSON,

—v.—

UNITED STATES OF AMERICA,

JUDGMENT—December 14, 1959

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 126]

IN UNITED STATES COURT OF APPEALS

{Title omitted}

MINUTE ENTRY OF ORDER DENYING REHEARING
—January 14, 1960

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 132] Clerk's Certificate to foregoing transcript (omitted in printing).

COMMUNIST INFILTRATION AND ACTIVITIES IN THE SOUTH

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

SECOND SESSION

JULY 29, 30, AND 31, 1958

Printed for the use of the Committee on Un-American Activities

INCLUDING INDEX

CLERK'S NOTE

In lieu of printing Government's Exhibit No. 1 counsel have stipulated that the attached printed copy of the Hearings before the Committee on Un-American Activities on July 29, 30 and 31, 1958 may be substituted.

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1958

29454

COMMITTEE ON UN-AMERICAN ACTIVITIES

UNITED STATES HOUSE OF REPRESENTATIVES

FRANCIS E. WALTER, Pennsylvania, *Chairman*

MORGAN M. MOULDER, Missouri

CLYDE DOYLE, California

EDWIN E. WILLES, Louisiana

WILLIAM M. TUCK, Virginia

BERNARD W. KEARNEY, New York

DONALD L. JACKSON, California

GORDON H. SCHERER, Ohio

ROBERT J. McINTOSH, Michigan

RICHARD ARENS, *Staff Director*

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PUBLIC LAW 601, 79TH CONGRESS

The legislation under which the House Committee on Un-American Activities operates is Public Law 601, 79th Congress [1946], chapter 753, 2d session, which provides:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * **

PART 2—RULES OF THE HOUSE OF REPRESENTATIVES

RULE X

SEC. 121. STANDING COMMITTEES

17. Committee on Un-American Activities, to consist of nine Members.

RULE XI

POWERS AND DUTIES OF COMMITTEES

- (g) (1) Committee on Un-American Activities.

- (A) Un-American activities.

(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings; to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

RULE XII.

LEGISLATIVE OVERSIGHT BY STANDING COMMITTEES

SEC. 136. To assist the Congress in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the Senate and the House of Representatives shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the Congress by the agencies in the executive branch of the Government.

RULES ADOPTED BY THE 85TH CONGRESS

House Resolution 5, January 3, 1957

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

(q) Committee on Un-American Activities, to consist of nine Members.

RULE XI

POWERS AND DUTIES OF COMMITTEES

17. Committee on Un-American Activities.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpoenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

26. To assist the House in appraising the administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

VI

SYNOPSIS

Hearings concerning Communist activities and infiltration in the South were held in Atlanta, Georgia, on July 29, 30, and 31, 1958.

The testimony of Armando Penha forcefully illustrated the Communists' alertness to opportunities presented them and the need they feel to concentrate their insidious efforts on penetrating new industries in that area. Mr. Penha had been an undercover operative for the Federal Bureau of Investigation in the ranks of the Communist Party from early in 1950 until the spring of 1958. During this time, he had risen to high rank in the party, both in his native New England and also on the national level. One of the important positions he had held was membership on the conspiracy's National Textile Commission, with which he served from its inception in 1955 until the completion of his FBI assignment. Mr. Penha described the Commission as follows:

The National Textile Commission is a leading body, nationally, that is set up for the purposes of controlling, coordinating, and supervising the infiltration and colonization within the textile industry, particularly within the South.

Mr. Penha gave the following information on the composition and duties of the Commission in this and prior committee hearings:

1. The National Textile Commission is composed of 5 members. Through one of them, it has direct contact with, and operates on the orders of, the party's National Committee in New York.

2. The Commission is highly secret. Its members have code names. Their true identity is not supposed to be known even to one another. Extreme security precautions are taken in conducting its meetings.

3. The Commission provides "colonizers" from the North for work in the South. (A colonizer is a hard-core party member "directed by the Communist Party to teach and spread propaganda in order to cultivate the workers within a plant or industry or legitimate organization.") These colonizers move into the South and obtain employment in the textile industry. Some are highly educated, holding bachelor's or master's degrees, and conceal this fact in order to obtain menial jobs which put them in contact with the rank-and-file workers.

4. The Commission furnishes the finances required to implement the party's plan of penetration in the South.

Penha, as a member of the National Textile Commission of the party, was sent into the South in 1955 to offer guidance to party members engaged in the infiltration-colonization operation. He traveled throughout North and South Carolina and, although extreme security measures were exercised, including the use of code names, was able to learn the identity of many persons he met. A considerable number of them were colonizers from the North.

Several persons Mr. Penha met on this trip were called as witnesses in these hearings. One was Madge Spurny Cole, currently employed

in a textile mill in North Carolina, who testified that she is a native of New York State and holds a master's degree from New York University. Her application for employment at this mill, produced by the committee during the hearing, stated that she was merely a high school graduate. Mrs. Cole invoked the fifth amendment when asked if she was a Communist Party member.

William J. Robertson, III, another witness and a college graduate, had followed the practice of Mrs. Cole by concealing his higher education when he applied for his position with a Southern textile mill. Like Mrs. Cole, Robertson also invoked the fifth amendment when asked to confirm or deny Penha's testimony concerning his part in the Communist Party plan to penetrate the South.

Several other witnesses who were identified by Penha as party members likewise refused, on the grounds of the fifth amendment, to furnish the committee with any information concerning their part in Communist Party activities in the South.

In furtherance of the committee's directive to gather information concerning the extent, character, and objects of un-American propaganda and its dissemination within the United States, testimony was obtained concerning propaganda of both a foreign and domestic origin.

Mr. Irving Fishman, Deputy Collector of Customs, New York City, testified that residents of the South, like those of other parts of the United States, were being deluged with Communist propaganda from abroad which is sent through the mails and directed primarily to schools and colleges.

Dissemination of Communist propaganda of domestic origin was illustrated in the committee's production, during the hearings, of a publication called the Southern Newsletter, which has a Post Office box address in a Southern city but is actually published in Chicago. Its editor, Mr. Eugene Feldman, invoked the fifth amendment to avoid answering any questions concerning his Communist Party activities.

Carl Braden, field organizer for the Southern Conference Educational Fund, which is active in the integration movement, also appeared as a witness in these hearings. Mr. Braden, who has been identified under oath as a Communist Party member, refused, on the basis of the first amendment, to give the committee any information concerning his role in Communist Party activities in the South.

Frank Wilkinson was also called as a witness when he appeared in Atlanta as a representative of the Emergency Civil Liberties Committee. This is an organization with headquarters in New York, which has as its avowed purpose the abolition of the House Committee on Un-American Activities and the curbing of FBI activities. Mr. Wilkinson refused to answer when asked if he was sent to Atlanta to disrupt the committee hearings. In reply to all questions asked him, he replied: "I am answering no questions of this committee."

One of the most illuminating aspects of the hearings in Atlanta was the testimony of a Hungarian refugee who, from 1945 to 1956, was a prisoner of the Soviet Union. Due to the fact that the witness has relatives now behind the Iron Curtain, his true identity could not be revealed. However, his account of the tortures and indignities suffered by himself and his father at the hands of his Communist captors, portrays a vivid and horrifying picture of communism in action.

COMMUNIST INFILTRATION AND ACTIVITIES IN THE SOUTH

TUESDAY, JULY 29, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Atlanta, Ga.

PUBLIC HEARING

A subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:07 a. m., in the Courtroom, Old Post Office Building, Atlanta, Ga., Honorable Francis E. Walter (the chairman) presiding.

Committee members present: Representatives Francis E. Walter, of Pennsylvania; Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; and Donald L. Jackson, of California.

Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

The CHAIRMAN. The committee will be in order.

Let there be incorporated in the body of the record the Resolution of the Committee on Un-American Activities authorizing and directing the holding of the instant hearings here in Atlanta.

(The information follows:)

BE IT RESOLVED, that a hearing by the Committee, or a subcommittee thereof, to be held in Atlanta, Georgia, or at such other place or places as the Chairman may designate, on such date or dates as the Chairman may designate, be authorized and approved, including the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated:

1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

(a) To obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

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3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

The CHAIRMAN. Let there likewise be incorporated in the body of the record the order of appointment by myself of the subcommittee to conduct the hearings.

(The information follows:)

June 24, 1958.

To: Mr. Richard Arenis
Staff Director

House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of Representative Edwin E. Willis, as Chairman, and Representatives William M. Tuck and Donald L. Jackson, as associate members, to conduct hearings in Atlanta, Georgia, Tuesday, Wednesday, and Thursday, July 29, 30, and 31, 1958, at 10:00 A. M., on subjects under investigation by the Committee, and take such testimony on said days or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If any Member indicates his inability to serve, please notify me.

Given under my hand this 24th day of June, 1958.

Francis E. Walter, Chairman,
Committee on Un-American Activities.

Representative Francis E. Walter, chairman of the full committee, presided over the hearing and made the following statement:

The hearings which begin today in Atlanta are in furtherance of the powers and duties of the Committee on Un-American Activities, pursuant to Public Law 601 of the 79th Congress, which not only establishes the basic jurisdiction of the committee but also mandates this committee, along with other standing committees of the Congress, to exercise continuous watchfulness of the execution of any laws the subject matter of which is within the jurisdiction of the committee.

In response to this power and duty, the Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most

of the Communist Party operation in the United States today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism.

We know that the strategy and tactics of the Communist Party are constantly changing for the purpose of avoiding detection and in an attempt to beguile the American people and the Government respecting the true nature of the conspiracy. As we on the Committee on Un-American Activities seek to develop factual information on these changing strategies and tactics for our legislative purposes, we are constantly met with numerous and unfounded charges respecting the nature of our work and our objectives. Such charges will not dissuade us from our duty. We seek the facts and only the facts. Insofar as it is within the power of this committee, as a part of the United States Congress, we shall obtain the facts and we shall do so within the framework of carefully prescribed procedures of justice and fair play.

I have long felt that the effectiveness of this committee appears to be in direct ratio to the volume of attack against it which is waged by the Communist Party and those under Communist discipline. Accordingly, I was interested to take note some several months ago of the intensified activity against the Committee on Un-American Activities and the Federal Bureau of Investigation which is now being promoted by the Communist Party. This campaign was the subject of a special booklet which the committee issued entitled "Operation Abolition." I was somewhat gratified to receive a letter from Mr. J. Edgar Hoover, Director of the F. B. I. in regard to this booklet, part of which letter reads as follows:

This booklet depicts another example of the apparent ease with which the Communists have been able to enlist the support of misguided individuals to assist them in obscuring their subversive workings. Certainly the real meaning of civil liberties is not understood by these Communist apologists.

Your Committee's role in safeguarding our freedoms is well known to every patriotic citizen, and real Americans are not going to be fooled or misled by efforts to discredit your vital task.

Preliminary investigations by the staff of this committee indicate that the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North.

May I emphasize that the purpose of the committee here in Atlanta is to develop facts with reference to a pattern of operation and not to attempt to exhaust the subject matter. We have not subpoenaed witnesses for these hearings merely for the sake of exposure or to put on a show. We are engaged in the serious business of tracing the operations in the United States of a world-wide conspiracy which is determined to destroy us. Should we attempt to interrogate in these hearings even a significant percentage of all possible witnesses on whom we have lead information regarding Communist activity in the South, we would be here for many months to the neglect of our work elsewhere.

It is a standing rule of this committee that any person identified as a member of the Communist Party during the course of the committee hearings will be given an early opportunity to appear before this committee, if he desires, for the purpose of denying or explaining

any testimony adversely affecting him. It is also the policy of the committee to accord any witness the privilege of being represented by counsel; but within the provisions of the rules of this committee, counsel's sole and exclusive prerogative is to advise his client.

I would remind those present that a disturbance of any kind or an audible comment during the hearings will not be permitted. This is a serious proceeding in which we are earnestly trying to discharge an important and arduous duty with the general objective of maintaining the security of this great Nation.

The committee is encouraged at the outset of this work by the presence of the distinguished Governor of this great State, for whom many of us have long had a feeling of great admiration.

We are very happy that you have come here this morning, Governor.

STATEMENT OF HON. MARVIN GRIFFIN, GOVERNOR, STATE OF GEORGIA

Governor GRIFFIN. Chairman Walter, other distinguished members of the Congressional Subcommittee of the Committee on Un-American Activities:

We know that the Communist conspiracy in our country has gone underground during recent years; that there is no such thing now in America as a card-carrying Communist. The ever-changing strategy of these subversives, who would exchange the great American system of States Rights and local self-government for totalitarian dictatorship, makes the patriotic and important task to which you have been assigned more difficult.

In extending to you a most gracious welcome to Georgia, we also assure you that those of us who believe in the principles of freedom laid down by the founding fathers, and that includes a vast majority of the good people of Georgia, support you most vigorously and pray most fervently for your success in this most important undertaking.

If you will pardon a personal reference, Mrs. Griffin and I have a young ensign with the 6th Fleet at Beirut at this time and we, along with millions of other Americans, believe that this is the time for all good Americans to come to the aid of this great Nation.

And speaking personally for myself, sirs, I have no respect for strays.

If the resources of the State government can be of help to you, please feel free to call on us on capitol hill. And I pray and hope that your undertaking bears fruit and that you are successful.

The CHAIRMAN. Thank you very much, Governor.

Mr. Arens, will you call your first witness?

Mr. ARENS. Armando Penha, kindly come forward and remain standing while the chairman administers an oath.

The CHAIRMAN. Mr. Penha, will you raise your right hand, please? Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PENHA. I do.

The CHAIRMAN. Have a chair, Mr. Penha.

TESTIMONY OF ARMANDO PENHA

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. PENHA. My name is Armando Penha. I live at 22 Dover Street, Fairhaven, Massachusetts. My occupation is an investigator of veterans' services for the City of New Bedford in the State of Massachusetts.

Mr. ARENS. At the outset, Mr. Penha, may I ask you if you have ever been a member of the Communist Party and, if so, over what period of time?

Mr. PENHA. I have been a member of the Communist Party from the very beginning of 1950 to March of '58.

Mr. ARENS. Is it a fact, Mr. Penha, that during this period of time from 1950 until March of this year, you have served in the Communist Party at the behest of the Federal Bureau of Investigation?

Mr. PENHA. That is correct, sir.

Mr. ARENS. Have you ever been ideologically in sympathy with the Communist Party?

Mr. PENHA. Absolutely not, sir.

Mr. ARENS. Your sole and exclusive function in the Communist Party was to serve your country at the behest of the Federal Bureau of Investigation, is that correct?

Mr. PENHA. That is absolutely correct, sir.

Mr. ARENS. Would you tell us, first of all, please, sir, just the highlights of the positions which you have occupied in the Communist Party.

Mr. PENHA. Among other positions, I have been a member of the Section Committee for the New Bedford area; section organizer for New Bedford; chairman of Bristol County, comprising the cities of Taunton, Fall River, and New Bedford; member of the New England District Committee, which is the leading body that controls the Communist apparatus in the entire New England area; and a member of the National Textile Commission with headquarters in New York City.

Mr. ARENS. Tell us, first of all, what is the National Textile Commission of the Communist Party.

Mr. PENHA. The National Textile Commission is the leading body, nationally, that is set up for the purposes of controlling, coordinating, and supervising the infiltration and colonization within the textile industry, particularly within the South.

Mr. ARENS. Over what period of time did you serve on the National Textile Commission of the Communist Party?

Mr. PENHA. Approximately May or June of 1955, and then on, sir.

Mr. ARENS. I expect to pursue this particular subject matter with you in considerable detail in a few moments. Just from the standpoint of giving the committee and this record your appraisal of the over-all operation of the Communist Party, Mr. Penha, on the basis of your extensive background and experience, please tell this committee how serious is the Communist operation in the United States right now.

Mr. PENHA. Based upon my experiences, it is rather unfortunate for me to report—but fortunate in order to alert the people of the United States—that the Communist Party in this country is by and large a greater menace today than it has ever been in the past.

Mr. ARENS. Would you kindly explain why you have reached that conclusion after your 8 years in the Communist Party as an undercover agent of the FBI.

Mr. PENHA. Well, sir, shortly after I entered the Communist Party, the Communist Party reevaluated its entire policy; and, in order to carry out its aims, it realized that the most important thing for it to do was to go completely underground, with only a small group that would exist in the upper level for propaganda purposes.

In connection with this, the party, by going underground, has been a party of hard-core, zealous, dedicated Communists, who have been trained for the ultimate purpose of the overthrow of this Government. Its techniques have adopted both legal and illegal methods of operations, both open and concealed methods, and above all, at all times, to go in accordance with the wishes of the Kremlin.

Mr. ARENS. Is the Communist Party a political party?

Mr. PENHA. It is not and never has been a political party, sir.

Mr. ARENS. What is it?

Mr. PENHA. The Communist Party, which is known as such, is a conspiracy dedicated to the overthrow of the United States.

Mr. ARENS. According to press reports, which we have seen from time to time in the Communist press, the actual size of the entity known as the Communist Party has been reduced, Mr. Penha. Does this mean, in your judgment, that the effectiveness or strength or menace of the Communist Party has been proportionately reduced?

Mr. PENHA. Absolutely not, sir.

Mr. ARENS. Why?

Mr. PENHA. The reason for that is very basic. The party is not interested in numbers. It is interested in quality. In fact, as a result of the comrades that either have resigned or have been expelled or have been defected by the party, they, as a result of that, have strengthened themselves in removing these weak links. The party consists of a hard-core well-organized, efficient group of Communists.

Mr. ARENS. Who were the members of the National Textile Commission during your period of service up until March of this year?

Mr. PENHA. The members of the National Textile Commission, with headquarters in New York City, their coordinator and contact man for the National Committee of the Communist Party in New York City was a Fred—I may at this point raise the point that I will make reference to 2 names. This was because of the fact that the National Textile Commission was strictly a secret organization. As such, even its members had code names; they were not supposed to know one another. The code name of their chairman of the National Textile Commission and coordinator was Fred; his true name, Robert Handman of New York City.

The CHAIRMAN. How do you spell that?

Mr. PENHA. H-a-n-d-m-a-n.

The other member, code name, Bill; true name, William Evans, who was also a section organizer for the Communist Party in Durham, North Carolina. He represented the State of North Carolina within the National Textile Commission.

The other person, code name Jack; true name, George Sheldrick.

Mr. ARENS. Kindly spell that name, please, sir.

Mr. PENHA. S-h-e-l-d-r-i-c-k. George represented the State of New Jersey.

The last person, code name, Tom; true name, Armando Penha.

There were some other Communist Party members that attended the National Textile Commission meetings, at one time or another, that were not members of it, but were highly placed Communists that were instructed either by the National Committee or the New England leadership. If you would like, I could raise those points next.

Mr. ARENS. I want to get into that in just a moment. I would like to ask you, first: On the National Textile Commission, what were their techniques of operation?

Mr. PENHA. Their techniques of operations were that of establishing, which they did, a group of colonizers, Northern colonizers, to be sent to the South.

Mr. ARENS. If you will hesitate a moment, please, Mr. Penha, tell us what is a colonizer in Communist jargon?

Mr. PENHA. A colonizer is one that is directed by the Communist Party to teach and spread propaganda in order to cultivate the mass workers within a plant or industry or legitimate organization. He must use, in his tactics, methods of spreading confusion, agitation. Such attacks are to be made, both legally and illegally. He has to be able to cope with existing situations—one moment being on the offensive and the other on the defensive—participating in open activities of mass agitation and propaganda while, at the same time, being capable of undertaking concealed activities which will obstruct and undermine public confidence in our foreign policy.

However, the clear-cut danger of a colonizer is that he is a part of a vast network of secret party members, of potential saboteurs and espionage agents. The placement of these colonizers in key and basic industries is vital to the party from the standpoint of placing such colonizers in the position of promoting strikes, slowdowns, and so forth. In such concealed positions a colonizer, in the event of an emergency, becomes very effective to commit sabotage.

Mr. ARENS. May I ask at this point a general question? Why would the Communist Party have designs on the South from the standpoint of attempted colonization?

Mr. PENHA. Sir, before I answer that question, if I may be permitted to, I would like to stress 2 points here from this book "New Opportunities in the Fight for Peace and Democracy—Main Report Delivered at the National Conference of the Communist Party, U. S. A."

Mr. ARENS. By whom?

Mr. PENHA. Supposedly written by Andrew Stevens. However, this is another party technique in order to conceal the true identity of the Communist that wrote it. This was a party document, so-called main report, delivered at the national conference of the Communist Party, U. S. A.—a national conference which was secret, and no one knew where it was taking place, when, who were the members, who were the speakers.

Mr. ARENS. Did you attend that conference?

Mr. PENHA. I did not, sir. This was too top secret a meeting for even myself to attend. However, in reference to colonization, this is

the National Committee's instructions outlined at its conference. And I quote:

The prime objective of every shop club must be to influence the mass of non-Party workers in a given department, shift, or building and not to be a faction-type of mechanism for high-level dealings with union leadership. This means that the role of every shop club must be clearly established in relation to the mass of workers among whom it operates, but this requires the Party leadership to be as familiar with the problems and relations of forces in a given department, shift, or building as it is with the state of affairs in a local union executive board. Of course, we cannot be satisfied with the organization of the shop workers already in the Party into shop clubs based on the existing pieces of employment. Our main aim is to route our Party organization in the shops in basic industry so as to conform to our concentration policy. A concentration policy which is based on the mass-production industries and the Right-led unions but which does not have the instrumentality of Party organization in those industries and their key shops is a highly abstract concentration policy. To put flesh and bone on our concentration policy we must undertake to shift the base of our Party membership into key shops and industry.

That, in Communist language, means relocation of hard-core members to be sent into given areas as colonizers.

Mr. ARENS. And why would the Communist Party covet the South in this colonization program?

Mr. PENHA. The South, as far as the party is concerned, is a virgin territory. Insofar as that the party sees the potentials that exist here, the potentials are those that the party will exploit for their own gains. They will agitate and use every means within their command to raise political and economic issues of the Negro people in order to create mass agitation and foment discord at the same time.

Mr. ARENS. Do the activities of the Communist Party in colonization in the South parallel the program of industrialization of the South and the moving to the South of the textile industry?

Mr. PENHA. Would you repeat that question, sir?

Mr. ARENS. Does the effort of the Communist Party to colonize in the South run parallel with the movement of the textile industry from the North into the South?

Mr. PENHA. It absolutely does, sir.

Mr. ARENS. Now kindly tell us in your own words, Mr. Penha, just what you did specifically during your period of service on the National Textile Commission of the Communist Party toward furthering the aims and objectives of the Communist program to colonize in the South.

Mr. PENHA. There were several things, sir. I will start, first, with after, I believe, the third meeting held in New York City. I was delegated by the National Textile Commission—

Mr. ARENS. Excuse me. What year was this, please, sir?

Mr. PENHA. This was about August of 1955, when I was instructed to meet with the party leadership in the South—namely, North Carolina, South Carolina, and Virginia. The reason for this was for the party—and that is nationally, because this was in accordance and supervised by the National Committee of the Communist Party, New York City—to evaluate the Southern problem that exists within the party, its weaknesses and so forth in order to establish the need and the placing of colonizers in the given areas of the South.

Mr. ARENS. Excuse me. Just proceed at your own pace to tell what you did.

Mr. PENHA. Before I get into that, sir, I would also like to point out that I was instructed to attend party meetings in the South, meet with party leaders in the South, in order to raise organizational problems in an attempt to solve them and, at the same time, to place down in the given areas of the South the organizational aims, party policy and lines, that they were to undertake. In other words, they were to do just what the National Textile Commission and the National Committee would direct.

Mr. ARENS. And these directives were given to you in 1955?

Mr. PENHA. That is correct, sir.

Mr. ARENS. Kindly tell us what you did pursuant to those directives.

Mr. PENHA. I received my instructions from the district organizer for New England.

Mr. ARENS. And his name again, please sir?

Mr. PENHA. His name is Sidney Lipshires.

Mr. ARENS. Spell the last name, please, sir.

Mr. PENHA. L-i-p-s-h-i-r-e-s. He had just recently arrived from New York, and he had received instructions as to the date, the place, and the time that I would leave, along with that information as to how I should conduct myself and what was to be achieved in the South. Subsequently, in September of 1955, I came down South.

Mr. ARENS. Tell us first of all where you went through the South, and then we will take it, bit by bit, as to what transpired. Where did you go?

Mr. PENHA. Well, sir, I went mainly, covering practically the entire State of North Carolina. I was not able at that time to get into Virginia.

Mr. ARENS. Did you meet with people from other Southern States even though you physically were not present in those States?

Mr. PENHA. I met with people that were from other States that were assigned in the South as colonizers or leaders at that time.

Mr. ARENS. Before we proceed with the details of your trip, tell us whether or not you came to the South as an open and avowed Communist or whether, on the other hand, you were in the underground.

Mr. PENHA. When I came to the South, there was only one person in the South that was aware of my trip. Just prior to this person being told, there was also another Southern leader, who at the time was in New York City, that was told; and subsequently he went into Carolina. However, the procedure, as far as coming into the South, was that of complete secrecy. I did not at any time, as I was instructed, reveal my true name, my place of origin, or anything that would reveal even to the comrades in the South who I was.

Mr. ARENS. Now, sir, who was this person in the South who knew that you were coming and knew you were coming as an undercover, or a secret, member of the Communist Party?

Mr. PENHA. This person who knew was another member of the National Textile Commission, Bill Evans.

Mr. ARENS. Can you tell us whether or not you were given a schedule of appearances, meeting places, lists of people to see, and the like?

Mr. PENHA. Well, sir, when I arrived in North Carolina, my first task was to sit down with Bill Evans and get a report from him as

to what he had arranged for the following week. At that time, he indicated to me what he had prepared insofar as party meetings went: where they would take place, his consensus of opinion of the problems that exist there, the weakness, and how I could help. The names of the people, that is, the Communist Party members, that I was to meet were not revealed to me because of the fact that the majority of them were colonizers, others were section organizers, section committee leaders within that area.

Mr. ARENS. Bill Evans you knew as a comrade, did you not?

Mr. PENHA. Yes, sir.

Mr. ARENS. In passing, give us just a word of his location and activities.

Mr. PENHA. Well, he was a section organizer for Durham, North Carolina, sir.

Mr. ARENS. How did you know the names of the people in the South whom you were to contact, specifically, how did you know that?

Mr. PENHA. Well, sir, I did not know. Another leading Communist who was in New York came down to Carolina to contact the party, and one of his immediate tasks was that of seeing that the proper agenda was arranged for me to be able to see the various groups of colonizers, section leaders, and so forth.

Mr. ARENS. And who was he?

Mr. PENHA. Junius Scales.

Mr. ARENS. Give us just a word of description of Junius Scales, and his present status, by the way, please, sir.

Mr. PENHA. Junius Scales was, at the time, the district organizer for Carolina. He was out on bail at the time, living in New York City; but instructed, from time to time, by both the National Committee and the National Textile Commission to come into the South—mainly Virginia, South Carolina, and North Carolina—in order to carry the party line across. He did not come on an open basis, that is security was taken care of at all times so that no one would know where he was going and when and so forth.

Mr. ARENS. Prior to the time that you started on your trip to the South, did you have contact with the Southern organizer for the Communist Party?

Mr. PENHA. If I recall correctly, sir, I did not have direct contact with the Southern regional organizer prior to going; but, as I was told, the district organizer for New England was the one that had direct contact in order to be able to know the situation that existed there and what could be done there. However, when I returned back, I did meet at least twice with the Southern regional organizer, which means the leading Communist for the entire South in the Communist Party.

Mr. ARENS. And who is that person?

Mr. PENHA. That person is Fanny Licht from New York City.

Mr. ARENS. Spell the last name, please.

Mr. PENHA. Her last name I believe is L-i-c-h-t.

Mr. ARENS. It isn't L-i-c-h-t?

Mr. PENHA. It possibly could be, sir. I don't know.

Mr. ARENS. And Fanny Licht's residence is in New York City, is that correct?

Mr. PENHA. That is correct, sir. I met her at her home. Also I met her at other places in New York. But I was able to meet her at her home in New York City.

Mr. ARENS. Mr. Chairman, I think it would be appropriate to announce at this time that Fanny Licht was placed under subpoena pursuant to your direction, but because of medical reasons, her subpoena was continued and her appearance under the subpoena was postponed.

Now, Mr. Penha, would you kindly at your own pace, tell us about your trip. You have given us the detail of the background and the arrangements that were made. Tell us, if you please, sir, just where you went and what you did.

Mr. PENHA. Well, sir, just before getting into that, I would like to request that, at a later time, I would indulge more into Fanny Licht.

Mr. ARENS. Yes; and her activities.

Mr. PENHA. Because I think it is highly pertinent that I should do so.

Mr. ARENS. I anticipate that we will be questioning you along those lines. We would like, in the order of presentation of your testimony, if you please, Mr. Penha, to have you now tell us about this trip, where you went, whom you saw, and what you did.

Mr. PENHA. Thank you sir. In Durham, North Carolina, I met, of course, with Bill Evans; William Robertson, a colonizer originally from the State of Virginia; Mary Robertson, his wife, a member of the Section Committee for Durham. At the time, she was employed at Duke University. Prior to that she was a colonizer. Her last known whereabouts, to my knowledge, is Chicago.

The CHAIRMAN. May I ask a question at this point?

This National Textile Commission, were any of the members of this Commission textile workers, or were they just Communists assigned to a particular field?

Mr. PENHA. Well, sir, there were 2 that were textile workers, if you want to call it that, that is, in the broad general sense. Bill Evans and George Sheldrick were working in textile plants; however, as colonizers for the Communist Party. In other words, they were not genuine textile workers.

The CHAIRMAN. That is what I wanted to determine.

Mr. PENHA. Jerome Van Camp—

Mr. WILLIS. You are still talking about Durham?

Mr. PENHA. This is Durham, sir—a former colonizer. When I make reference to “former,” that is because of the fact that either they had been laid off or, in some cases, they were dropped from their place of employment because of the appearance of the House Committee just prior to my trip going down—for which all America should be very thankful.

Mr. ARENS. You are speaking of this committee's hearings in Charlotte, North Carolina, about 2 years ago, is that correct?

Mr. PENHA. That is correct, sir. Oscar Berland—

Mr. ARENS. Excuse me just a moment. Before you get to Mr. Berland, can you tell us a little more about Jerome Van Camp?

Mr. PENHA. Jerome Van Camp, as I stated, was a former colonizer. He was under the wing and protection of Bill Evans for the purposes of further cultivation.

Oscar Berland—

Mr. ARENS. You might spell that, please, sir.

Mr. PENHA. B-e-r-l-a-n-d, a colonizer originally sent down by the National Committee from New York. He is a native of New York.

Madge Spurny, a colonizer, originally I believe from New Jersey. The reason I say "I believe" is because a cousin of hers who was also a colonizer, Geoffrey White, had told me that they were cousins.

Mr. ARENS. Is Madge Spurny named also Madge Spurny Cole? That is her married name?

Mr. PENHA. Her present name is Madge Spurny Cole.

Mr. ARENS. C-o-l-e?

Mr. PENHA. That is correct, sir. She was a section member for Durham at the time.

Nat Bond, alias Joe, member of the Section Committee for Durham.

Ella Levine Matthews, a colonizer from New York, who had been sent down to the South during the week I was there. She is a daughter of Ben Levine who was a well-known Communist and writer for the Daily Worker.

William Matthews, another colonizer sent from New York, her husband.

The next group is Winston-Salem.

Mr. ARENS. Excuse me, before you move to Winston-Salem in your chronology of your trip, Mr. Penha, what did you do at Durham in your session or sessions with these people whom you have identified as Communist colonizers?

Mr. PENHA. There were many things that I did, sir. We attended meetings, several of them. The purpose of these meetings was for me to make an appraisal for the need of colonizers within the South, to analyze the existing weaknesses that existed organizationally, and make recommendations—of course, from the party, when you make recommendations it is an order—for better and more efficient organization; attempt to work out a plan with them for relocation of other colonizers already in the South; coordinate the organizational policy of the party and its line between the South and North, so that the North would have its control of the situation in that area.

Mr. ARENS. Where were these meetings held in Durham?

Mr. PENHA. These meetings were held with a maximum security. Some were held in homes, trusted homes. The meetings that were held in the homes, at all times all security precautionary measures were taken. Other meetings were held in automobiles; and in addition to that, we also had meetings which were held within Duke University and its campus. The reason for all of these given areas and others was because of security.

Mr. ARENS. Tell us about the meeting at Duke University.

Mr. PENHA. The meeting that was held at Duke University—I believe there were 2. One was held within the chapel of Duke University for security reasons. It is obvious that it would be one of the best places.

Mr. ARENS. Who made the arrangement for the group to convene in the chapel at Duke University?

Mr. PENHA. These arrangements were made by Bill Evans and presented to me for my approval at the time.

Mr. ARENS. How many assembled in the session which was held at Duke University chapel?

Mr. PENHA. I would say that the greatest number was 3 to 4.

Mr. ARENS. Under what pretense was the chapel made available to the group for its session?

Mr. PENHA. The party took advantage of the chapel being available to the public, as it is supposedly, for the purposes that we were going there to pray and see the chapel itself.

Mr. ARENS. I have never been to Duke University, and I should like to inquire: Is this chapel a place of meditation or is it a place of public worship where there are general services with generally a large congregation?

Mr. PENHA. There is quite a large congregation, and it is also a place of meditation at the same time, sir.

Mr. ARENS. Where did the actual Communist Party conclave take place, within the larger edifice or within a smaller sanctuary?

Mr. PENHA. It took place within the largest because of the reason that it would be the most logical place. Of course, none of us carry anything with us that would be suspicious; and as such you can talk, and people will just think that you are part of a religious group, that is, within that building.

Mr. ARENS. Did Bill Evans make an overture to the administrative authorities at Duke University soliciting the chapel for use of the Communists or did the Communists under his leadership in this session just go to the chapel?

Mr. PENHA. The party just went there, sir.

Mr. ARENS. Have you concluded with your activities at Durham?

Mr. PENHA. I haven't concluded, sir.

Mr. ARENS. Go right ahead, please, sir. I would like to have you cover it to give the significant points.

Mr. PENHA. While I was in Durham, I was informed that Oscar Berland, who was the contact party member and coordinator for Junius Scales—the reason for this was that secrecy was at its highest peak and Junius Scales, being well known, we had to be absolutely sure of not only my safety, but of those other comrades, particularly colonizers, I would see.

Mr. ARENS. I am not sure the record is clear, Mr. Penha, if you will pardon the interruption. You say you were informed of Berland. Do you mean you met him there?

Mr. PENHA. I met Oscar Berland there, yes, sir.

Mr. ARENS. Was he identified to you as part of the underground apparatus of the Communist conspiracy in this country?

Mr. PENHA. That is absolutely true, sir.

Mr. ARENS. Tell us what transpired between you and Berland.

Mr. PENHA. One of the things was that I sent a message to Junius Scales at the time, through Oscar, in order to strengthen the party meetings both in quality, more so in that, and in reaching the local party officials in each given area so that I could place them on the spot. Subsequently, the following evening, Oscar Berland came back with an answer from Junius Scales promising full cooperation.

In addition to that, I had brought down with me a copy, a document, 18-page document, that we were preparing, the National Textile Commission; and Bill Evans had received one also. This document was to be used at the time in strengthening the general line that we had and obtaining as much information as will strengthen this document. Oscar Berland was the key person in this. I worked

with him. The only phase that he was not to touch was that which the National Commission itself would handle. The problems of the South was particularly the key point that I worked with him on at the time.

Mr. ARENS. Are there textile mills in or around the Durham area where you were in session?

Mr. PENHA. Yes, sir.

Mr. ARENS. Have you completed the highlights?

Mr. PENHA. There is the Erwin Mills in the Durham area, which they brought me there to see, so that I could better evaluate the size and location of the plant and the need for colonizers there.

Mr. ARENS. And at all times you were in the underground apparatus in this process?

Mr. PENHA. At all times they knew me as only Tom.

Mr. ARENS. I should like to ask this naive question on the record, so it is clear: The time is long since past that you can look in the telephone book and find the Communist Party's address in any given area, is that not true, Mr. Penha?

Mr. PENHA. That is absolutely true.

Mr. ARENS. The time has long since passed when the Communist Party, as an operating entity, is above ground, isn't that true?

Mr. PENHA. That is absolutely true, sir.

Mr. ARENS. Sir, have you completed the significant facts with reference to your visit to the Durham, North Carolina, area?

Mr. PENHA. The only point I want to raise about Durham is that while these meetings were taking place, I participated in them on the basis of criticizing the local leaders; making recommendations to strengthen the apparatus; and subsequently, as a result of this, making my own recommendations in New York City so that in my opinion I would have the leading person, Bill Evans, removed from leadership, which was done subsequently.

Mr. ARENS. And you were working under direct orders of the National Textile Commission itself, is that correct?

Mr. PENHA. That is correct, sir.

Mr. ARENS. Before we leave Durham in the chronology of your trip to go to the next place, have you told us the name of each person who was a participant in these secret sessions at Durham?

Mr. PENHA. All of these people that I have made reference to, starting with Bill Evans and concluding with William Matthews, participated in one or more meetings with me. I believe I attended some 5 or 6 meetings with each and every one at one time or another.

Mr. ARENS. Do you here and now testify that each of these persons, to your certain knowledge, was a member of the Communist apparatus?

Mr. PENHA. I absolutely do, sir.

Mr. ARENS. Now tell us the next place you went, please, sir, and give us the comparable facts relating to that place.

Mr. PENHA. Winston-Salem area. Warren Williams, section organizer for Winston-Salem, who at that time gave me the number of a secret mail box that the party was using in the Winston-Salem area so that I would be able to furnish from the North material that would help organizationally. Rebecca Williams, his wife; George Van Camp, a member of the Section Committee; member and formerly a colonizer; Betsy Van Camp, another member of the Section Committee, the

wife of George; Ruth Van Camp, today Ruth Evans. She has married William Evans. Karl Korstad—

Mr. ARENS. Is that K?

Mr. PENHA. K-o-r-s-t-a-d, a member of the Industrial Commission for the Communist Party in High Point, North Carolina; Frances Korstad, his wife, also a member of the same commission. Eugene Feldman, F-e-l-d-m-a-n, a member of the Industrial Commission, formerly a colonizer that was sent down to Alabama, later was sent into the Winston-Salem area; and he at the time was working a meat market in order to develop a background of occupations so that when he would be able to get into a plant, he would have something to back it up.

The CHAIRMAN. You say he was sent. By whom was he sent?

Mr. PENHA. He was sent by the national leadership of the Communist Party, sir. He was also very instrumental in his own synagogue, teaching Sunday school to the children, which is another party technique.

There was a Bill, last name I do not know, who was an Industrial Commission member and my driver at the time. I might add, insofar as these people are concerned, through security devices and measures I was able to know their true identity, not that they told me while I was down there. The same facts apply that they only knew me as Tom, and I only knew them as other names they gave.

Mr. ARENS. Did you learn anything of the general educational background of the colonizers whom the Communist Party selected to penetrate the South?

Mr. PENHA. I certainly did, sir. And I found, which was no surprise to me, because based on my experiences I was fully aware of this, that the average colonizer either holds a bachelor's, master's, or doctor's degree; and in the case of the South, this was absolutely correct.

Mr. ARENS. When they went into the South to work in the industrial establishments, the textile industry, did they, on the basis of your experience, reveal to their prospective employers that they had high educations?

Mr. PENHA. In my experience, they did not at any time do that because it would be obvious they would never get employment as such.

Mr. ARENS. What type of jobs did they take, just as a pattern?

Mr. PENHA. They would take menial jobs in order to go along with the instructions that were handed down by the party. They were willing to sacrifice years of formal education in order to serve the party's aims.

Mr. ARENS. Now I should like to ask you, before we get into the activities of Winston-Salem, Mr. Penha, to give us as much detail as you can on this public record with reference to certain of the people whom we have under subpoena and who will be heard by this committee during our stay here.

I ask you, first of all, to give us as much detail as you presently have with reference to Mr. Eugene Feldman, whom you have identified as a person known by you to be a Southern colonizer of the Communist Party.

Mr. PENHA. Well, sir, I would like to say this in regard to him and others, that when I went down South it was extremely difficult

for me to handle my activities—and I am talking about my intelligence activities—in order to report it to the FBI and, at the same time, to conduct myself as a leader while I was down there. This was so because of the fact that they were not known to me by their true identities. I had to utilize security devices and so forth. So that, to make a complete background on each and every individual, as I started with Eugene Feldman a while ago, actually I couldn't go any further at this time other than stating that he was a college man; he was a colonizer originally sent from a Midwestern state, and he was instrumental in a synagogue.

Mr. ARENS. You would recognize him if you should lay eyes upon him; is that correct?

Mr. PENHA. I would put it this way, sir: While I was down there within a matter of 8 days, I believe, traveling extensively throughout that area, I met with approximately 32 party members, all secret members. Many of them I met at night in cars and places of the like. It is very possible that I can identify many of them. It is also possible that I may not be able to identify others. Some I was 2 hours with, others I was 5 and 6.

Mr. ARENS. Tell us what you did in Winston-Salem.

Mr. PENHA. In Winston-Salem, I had several meetings with Warren Williams, because he was the top man in that area, being the section organizer, fully evaluating the necessity that existed in strengthening the weakness, organizational weakness, within that area; making plans and preparations and getting as much information as possible, at the same time, of the existence of the Cone Mills, this was the Cone Mills in Greensboro, so that we could avail ourselves of transfers of party members from the various areas in North Carolina into that plant, too.

Along with that, there were other developments such as giving them a certain perspective in order to bring into light the fact that the North, including the National Textile Commission, the National Committee of the Communist Party, and the top leaders of the party in New England, of which I was one, were particularly interested in strengthening that key area. There were several proposals made. There were various discussions on the basic weaknesses. There was further implementation established at that time for coordination; both between the various groups within the South, the methods that should be further expanded on, and also between the North and the South.

Mr. ARENS. Did you, in addition to your work on this mission of the Communist Party on a textile penetration, give directives and consult with leaders of the operation in the South respecting penetration of nonindustrial groups, which we generally call Communist fronts?

Mr. PENHA. I gave as I recall a general approach to that matter. The reason for that was mainly that I had found there was much to be done on the level of infiltration and colonization. Therefore, I felt that I had to deal more extensively on that in those given areas.

Mr. ARENS. Tell us what, in Communist Party jargon, is meant by "infiltration."

Mr. PENHA. Well, sir, infiltration is the method whereby party members are instructed to penetrate organizations for the purpose of exercising influence of communism. To infiltrate a union organization or industry is but a first step. First and foremost, it must be

made to serve the party's interest. In labor organizations the party, once in control, will crush every opponent. The party's exploitation against our society can best be illustrated by their ability to stress the issues that are the important elements for a worker and thereby undermining politics.

In addition, in industry the ability of the party to play the role of mediator between industry versus union and vice versa, to create a wedge of ill feelings, is one of their specialties. However, to fulfill the party's aims, to achieve victory—force and violence being necessary for the party's victory—it follows that industrial sabotage and espionage are the key to the ultimate aim of the party's victory in industry.

The CHAIRMAN: I think we will have a recess to give the witness an opportunity to take a little rest. The committee will stand in recess for 5 minutes.

(A brief recess was taken.)

(Members present: Representatives Francis E. Walter, Edwin E. Willis, William M. Tuck.)

The CHAIRMAN: The committee will be in order.

(Committee members present: Representatives Walter, Willis, Tuck, and Jackson.)

The CHAIRMAN: Proceed, Mr. Arens.

Mr. ARENS: Mr. Penha, would you kindly resume the witness chair?

The CHAIRMAN: Mr. Penha, before you go on, just as a matter of curiosity, I would like to know how you got into the Communist Party originally.

Mr. PENHA: Well, sir, I will try to answer your question. However, as you know, there will be some important elements that I will have to leave out for security reasons. However, I first became acquainted with communism during World War II as a member of Military Intelligence. My activities encompassed particularly the country of Italy. In Trieste I was confronted with Yugoslav and Italian Communists. It was at that time that I became aware of the menace, that it was international in scope, and that I had to do something after the war to have at least some part in fighting communism.

Later on, after I was discharged from the service, I was in contact with the FBI; and after a thorough investigation of me, they accepted me within their ranks to infiltrate the Communist Party. I was very fortunate, through security devices, to be able to get in the Communist Party within two months. Subsequently after that my rise in the party was one that followed at a rapid pace.

The CHAIRMAN: How did you get into the party? That is the thing I am interested in and would like to know.

Mr. PENHA: Well, I should raise one general viewpoint on that, sir, to give you an illustration. At the time, in 1949 and early 1950, the Communist Party had a fifteen-minute radio broadcast which originated in the City of Fall River, Massachusetts. At the conclusion of this program the speaker—they had various speakers of the party, but mainly a Joseph Figueiredo, who subsequently brought me into the party—stressed at the end of the program that anyone that was interested, or would like to give comments or criticisms, was to write to the station or to him or to a post office box that had been set up for that purpose. I did, and subsequently he got in touch with

me, and it followed that he slowly attempted to indoctrinate me, cultivate me.

I believe this took a matter of some weeks because of the fact that he had known that I had lived in Portugal for a number of years, and he was strong in his belief of fighting the existing Premier at the time, who is still the Premier, Salazar, and he felt that my opinions coincided with his. That strengthened his belief that I could be possibly a good candidate for the party. After that it just continued to unfold.

Mr. JACKSON. He was wrong, wasn't he?

Mr. PENHA. Little did he know that.

The CHAIRMAN. All right, Mr. Arens.

Mr. ARENS. Now, would you kindly tell us the next place you went on your trip into the South at the behest of the National Textile Commission of the Communist Party?

Mr. WILLIS. May I ask one question at this point?

The CHAIRMAN. All right.

Mr. WILLIS. I suppose that you made regular reports to the FBI?

Mr. PENHA. Every contact that I made, whether it was in the South, New York, or in the North, I made reports on every single phase of activity, sir.

Mr. ARENS. Perhaps the committee would be interested to hear just a word, Mr. Penha, while we have diverted from the main theme, about your own personal life in the Communist Party. First of all, were you permitted to attend church services and be a regular communicant in the church of your choice?

Mr. PENHA. No, sir, I was not. The party, of course, as you gentlemen know, is basically an atheistic group. As such they do not want anyone to attend church or believe in any religion—other than a small group which think of infiltrating organizations within the church, not for the purposes of worship. As such, I had prepared in advance before contacting Joseph Figueiredo—that is, the preparation I made was divorcing myself from my own church so that, when I got in, I was completely out of contact with the church. During the entire eight years, I attended no more than eight services with the maximum security precautions taken at the time.

Mr. ARENS. Tell us a word, please, in this same vein, respecting the discipline which the Communist Party operations impose upon the comrades in their personal lives.

Mr. PENHA. Well, sir, their discipline is one that is again indicative of the fact that it is not a party. It is no party in this country, thank God; and I don't think we will ever have one that will maintain a discipline that the Communist Party does. For example, shortly after I was a member of the Communist Party, I had been in the insurance business during that time, and I was instructed, I was urged, and I was ordered to get out of my own profession and accept menial jobs. If I did not do that, I would not be able to advance in the party. This was a sacrifice of \$45 to \$50 a week for me and my family.

In addition to that, its discipline on the personal life of a Communist is revolved around many factors. One, your time is never your own. They can call you at will and tell you, you are leaving for New York within an hour; whether you are, at the time, working or not it does not

mean anything. At the same time they can come into your home at any time, as they did many times, and either have a meeting in your home or stay in your home for two or three days, and as such they insist on having complete access to your home.

In addition to that, from time to time, particularly when you advance in the party, the party does not trust each and every Communist, regardless of how high you get in the party—in fact, the higher you get the worse it is—so that they would go through my house, search anything and everything, just to be sure that I was a dedicated, zealous, hard-core member, which in turn I would do to other comrades.

Mr. ARENS. We have diverted from the theme of your trip. May I also ask you, Mr. Penha, what is a united front?

Mr. PENHA. The united front, sir, is one that the party has developed rather extensively in the promotion of agitation, propaganda, and being able to carry out the party line with legitimate organizations. The way the party goes at it, whether it is with labor unions or other legitimate organizations, they attempt to form a coalition of groups and, at that time, raise a given issue which is of primary interest either to the worker or to the community. The party, of course, during this procedure sees to it that it is able to penetrate key positions in order to carry out the party line.

Mr. ARENS. What is a front, as distinct from a united front operation? What is a Communist Party front?

Mr. PENHA. A Communist Party front, sir, is completely separate and distinct from a united front movement in the sense that a Communist front is either originated or developed by the party. It can also be a legitimate organization which the party has penetrated and gained control over. This front is to bring about various issues of the party, in particular, to undermine and harass our entire security system. One of its pet projects in the past has been to attempt to dissolve the Walter-McCarran Act.

Mr. ARENS. That is the Walter-McCarran Immigration and Nationality Act, is that correct?

Mr. PENHA. That is correct, sir. The reason for that is because of the fact that this Act has been so effective in holding down the Communists in this country and, at the same time, has curtailed the import of Communists from abroad.

Mr. ARENS. May I interpose a question right there, Mr. Penha?

The Communist Party in its attack on the Walter-McCarran Act doesn't come out and say, "We, the Communist Party, we comrades, we Communists want this act destroyed." How do they do? What is their technique? What are the mechanics by which they undertake to bring pressure on the Congress or create sentiments against legislative enactment?

Mr. PENHA. Well, sir, they have been very effective in their methods and techniques. One of their methods is establishing a chain of letters, communications and petitions, to the Congressmen, which within relatively a short time, 72 hours, they are able to put as much as 150,000 protests in, addressed to the Congressmen, the President, protesting such laws.

Mr. ARENS. The individual signer of these petitions and the person who writes the letter does not know at the time he does it that he has done so at the solicitation of a comrade, does he?

Mr. PENHA. He has no knowledge, whatsoever. He is a dupe.

Mr. ARENS. To what extent does the Communist operation in the United States use non-Communists for the purpose of accomplishing their objectives?

Mr. PENHA. It is rather unfortunate to report, sir, that the use of non-Communists, sincere Americans, is extensively used throughout the country. A conservative estimate, based on my experiences, is that a Communist is able, capable, and has direct or indirect influence or control over such dedicated Americans, insofar as having these people take the role which the party could not, and in this connection I would say that this average is between 10 to 12 Americans per Communist.

Mr. ARENS. Now, Mr. Penha, may we resume the itinerary which we were pursuing here a little while ago on your instruction tour in the South, in which you were meeting with key comrades on behalf of the National Textile Commission of the Communist Party? I believe we had finished the general theme of your testimony on the Winston-Salem, North Carolina, vicinity.

Mr. PENHA. Yes, sir.

Mr. ARENS. Where did you go next, please, sir, and tell us what transpired there.

Mr. PENHA. Well, sir, I went to a small town in South Carolina, the name of which does not come to my mind at the time; and preparations had been made for me to meet key Communists in that area and colonizers around there; but because of the fact that there was a discrepancy at the time involving the agenda and the arrangements for my appearance there, we only met with one Communist that was present at the time.

Mr. ARENS. Who was he, please, sir?

Mr. PENHA. I do not know his true name. I believe the code name that was used, if I recall correctly, was Pete.

Mr. ARENS. I beg your pardon?

Mr. PENHA. Pete. P-e-t-e.

At that time, of course, the same techniques and methods were developed with him in line with coordinating South Carolina with North Carolina, and exercising my influence to see that the National Textile Commission and the party as a whole, through the National Committee, would develop a further and extensive means of developing, carrying out, and directing the party policy and line within the South.

Mr. ARENS. Now, sir, may I invite your attention to the general subject matter of persons who are members of the Communist Party but not actively identified with the National Textile Commission who did come to New York City, or who were in contact with New York City, for the purpose of obtaining directions and orders?

Mr. PENHA. There were several comrades, sir. There was one Emil Asher, the husband of Martha Stone, national committee-woman for the party, who came from New Jersey.

Mr. ARENS. Excuse me. He came from New Jersey for what purpose?

Mr. PENHA. The purpose of Emil coming into New York was to strengthen the Commission's work, organizationally speaking and nationally speaking, in order to further implement the party policy

in the South, and to further commit New Jersey in utilizing finances in the South, colonizers to be sent down and its experiences that had been gained in the North.

Edward Strong, recently deceased, a National Committee member at the time, also a member of the National Negro Commission for the Communist Party.

Mr. ARENS. From where, please, sir?

Mr. PENHA. He was at the time in New York. Ed Strong's position was to strengthen again the national level with the South, to the extent that I recall in one of the meetings Bill Evans was present and was somewhat critical of the national line of the party, insofar as they were being directed by the North and that the South didn't seem to have much say. Ed Strong at that time was very instrumental not only in placing Bill Evans as a representative of the South in line, but seeing to it that the South was going to conform with the party's policy and line directed by the National Committee in New York. He went further to see to it that Bill Evans would have to be removed from his positions, again indicative of the national party's strength and control over the South.

Sidney Lipshires, at the time being the acting district organizer for the entire New England area. His participation there was also on the basis of extending the experiences of the North, the sending of two colonizers from the North and aiding in finances and propaganda to be sent down to the South.

Mr. ARENS. Was Junius Scales on the National Textile Commission itself?

Mr. PENHA. I was just getting to his name, sir. Junius Scales attended two of the National Textile Commission meetings in New York City. Because he was not a member of this Commission, he had been invited to attend its meetings. As the National Textile Commission was formed solely for the purpose of directing the party's activities in the South, it followed, then, that its membership was selected on the basis of having majority representation from the North. Only one member from the South would have actual voice in its decisions; hence, party supervision, direction, and discipline could be properly maintained. As such, Junius Scales was not a member of the National Textile Commission, but rather a top Southern Communist observer.

Mr. ARENS. Scales was tried under the Smith Act, was he not?

Mr. PENHA. That is correct, sir. At the time he was out on bail.

Mr. ARENS. While he was out on bail did he, to your certain knowledge, do any penetrating of the South, from the standpoint of work of the Textile Commission?

Mr. PENHA. Well, that was one of his phases of activities, sir. He had been instructed, from time to time, both by the National Textile Commission and the National Committee to go into the South—at this time he was living in New York—for the purposes of coordinating the party's activities in the South, meeting with top party officials, and seeing to it that the party's instructions given by both the National Textile Commission and the National Committee in New York City were to be carried out in Carolina.

Mr. ARENS. Did he do so?

Mr. PENHA. Yes, he did, sir.

Mr. ARENS. Did he do so while he was out on bail?

Mr. PENHA. He was out on bail at the time, sir.

Mr. WILLIS. Was he found guilty? Was Scales convicted?

Mr. PENNA. He was convicted and he appealed, sir, to the Supreme Court.

Later on Junius Scales was instructed by the National Committee again to go to New England in order to carry out a program of propaganda as instructed by the National Committee. On the surface the public was informed that he was there to defend his position, having been indicted on the membership clause of the Smith Act. However, his main purpose was to get into public debates, which he did in Providence, Rhode Island; to harass and undermine our internal security system; to attack it in all forms and shapes; and to attempt to get public support and cooperation and action against our Government. He also was instructed to obtain finances, which were to come from both party sympathizers and American people at large, supposedly for his defense. Actually the party was in need of money, and this was one of the reasons why he was sent, and it was much easier to obtain it on the basis of his need for his defense.

Mr. ARENS. Are there any others who were working with the National Textile Commission to your certain knowledge but who were not officially on the National Textile Commission?

Mr. PENHA. Oscar Berland, from Durham. As a result of my trip down South, I attended an organizational meeting in the latter part of 1955 in Fairhaven, Massachusetts. This meeting was for the purpose of giving a report on my trip, recommendations for changes. Among these I recommended that Bill Evans be replaced. As a result, Oscar Berland was sent in to replace him to attend National Textile Commission meetings.

At that meeting, present were: Fanny Licht, Southern regional organizer; Ed Strong, National Committee member; Mike Russo, who had just come out from complete underground for a period of approximately 3 years that he had spent and, during that period, he had completely changed his physical appearance and identity in order to avoid possible arrest; Sidney Lipshires, who had been acting district organizer for New England while Mike was completely underground; and myself.

Aside from my report, there was another report given by Ed Strong and implemented by Fanny Licht, relative to the fact of colonization. They had come into the New England area for the purpose of interviewing two prospective colonizers, namely, Geoffrey White and his wife, Ann White, from Providence, Rhode Island. They had requested, at that time, my opinion relative to the person of Geoff White, his capabilities.

Mr. ARENS. Whom was Geoffrey White to contact in the South?

Mr. PENHA. If I may on this point allude just one second, and then I will answer that, sir.

Mr. ARENS. Proceed. Excuse me.

Mr. PENHA. In the person of Geoff White, who subsequently went to the South as a colonizer, I of course recommended him, and I think this is highly pertinent—it again shows the effectiveness of a colonizer—like many others I met in the South, he was a Harvard graduate, a disciplined, hard-core, and zealous Communist who had been in

Eastern Europe at one time and subsequently, on his return, was told to accept a menial job as a colonizer in Rhode Island to gain some experience.

While he was working in Rhode Island as a colonizer—and he became very effective, as all colonizers do, in a relatively short time—he became editor of the local trade union newspaper; and there the party line was thoroughly put across. He was also able to recruit at least two workers, to my knowledge, into the Communist Party. Not only was he able to recruit them, but he knew how to cultivate and indoctrinate them. One of them in relatively a short time became a potential colonizer. He was specifically trained for that purpose.

These are more or less typical of what we find in all areas of the country as far as colonizers, particularly in this given area of the South.

Now, Geoff White subsequently was instructed, shortly after this meeting, to go to New York City with Michael Russo and there they would be met by Ed Strong. A fourth person was to come up from Dalton, Georgia, to meet with Geoff White. This person, as I was told, was an editor of a newspaper in the South, which happens to be the Southerner. We had various copies submitted to us in the North to use. Don West, as it was reported to me, was also a minister, very effective in labor organizations and a party member. He was to come to New York City to meet Geoff White, participate in consultations in order to ascertain the value and the need for Geoff White to assist Don West in the South, both within the paper, the Southerner, and within labor organizations and industries. Subsequently, Geoff White was sent down to the South as a colonizer.

I may add, on the issue of colonizers, it was reported time and time again in New York City in the national meetings that I attended, that the party stressed very much the fact that colonization is part of the party's industrial concentration program, because it would aim at increasing Communist influence, both in industry and labor. As such, the party would see to it that any colonizer sent down to the South would have to be a tested, hard-core, zealous comrade; and even if he was known in the North as a Communist, that would not matter because the party would change his complete identity, physically and otherwise; provide him with completely new identification, another name, complete new background, and so forth. He would have extensive training prior to coming into the South.

Mr. ARENS. Now, would you kindly tell us about the activities in the South, to your certain knowledge, of the Southern organizer whom you identified as Fanny Licht.

Mr. PENHA. Fanny Licht at that time, in 1955, was the Southern regional organizer, the top Communist that controlled the South for the National Committee. She was a Northerner living in New York City at the time. Her task was to carry out the party line and policy in the South within the framework of the instructions received by the National Committee. In addition to that, she was also a contact for many Communists to the National Committee. I recall one time I went to New York City with Sidney Lipshires, and he had a vast amount of money collected in New England to be turned over to the National Committee. We went to the home of Fanny Licht, and it was turned over to her so that she would give it to the proper person within the National Committee.

Fanny Licht attended at least two meetings with me and she took no pains to stress the point that, aside from being a Southern regional organizer, she had full responsibility within the National Committee. She saw to it, from time to time, that those people that were in the party that did not want to adjust themselves to accept her were to be weeded out of party positions.

Mr. ARENS. Mr. Chairman, this particular witness has in other executive sessions given considerable information to the committee on other areas and other items of interest in the jurisdiction of the committee. We have no further questions to ask this witness at this time respecting the particular operation which we have been pursuing thus far in this hearing.

The CHAIRMAN. Have you any questions?

Mr. WILLIS. No.

The CHAIRMAN. Governor Tuck?

Mr. TUCK. I have no questions.

The CHAIRMAN. Mr. Jackson?

Mr. JACKSON. I have no questions, Mr. Chairman. However, I feel the American people, the committee, and the Congress are indebted to Mr. Penha. Only one who has cut off all the normal ways and manners of life to enter the Communist Party can understand what a sacrifice it is; and to spend 8 years in the conspiracy on behalf of the Government constitutes a great service to America.

I want to congratulate the witness and express my appreciation and my thanks to him, Mr. Chairman.

Mr. PENHA. Thank you, sir.

The CHAIRMAN. Yes, Mr. Penha, I, too, want to thank you. You rendered a great service to your country, perhaps as great as the service you rendered during wartime. It is appalling to me to see the apathy on all sides and particularly from people who are well informed. This is a very distasteful task this committee is performing, and I assure you not a member of it sought the position he occupies. But somebody has to do it, and I might say to those who would destroy the effectiveness of the committee by making attacks on the several members that when the committee as presently constituted changes, the same work will continue.

And it is only because of people such as you that we can devise the kind of legislative program that will help.

This last week we had some hearings regarding a matter that had been developed through hearings of this committee; and I am sure that when the proposals are enacted into law, it will go a great way toward undoing what was done through a decision of the Supreme Court.

Call the next witness, Mr. Arens.

Mr. ARENS. Mr. Eugene Feldman, kindly come forward.

The CHAIRMAN. Will you raise your right hand, please?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FELDMAN. So help me God.

The CHAIRMAN. Sit down.

**TESTIMONY OF EUGENE FELDMAN, ACCOMPANIED BY COUNSEL.
C. EWBANK TUCKER**

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. FELDMAN. My name is Eugene Feldman, I am of Chicago, Illinois, 6025 South Harper. I am a tutor by occupation.

Mr. ARENS. I beg your pardon?

Mr. FELDMAN. I am a tutor by occupation.

Mr. ARENS. You are appearing today, Mr. Feldman, in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. FELDMAN. I beg your pardon, please?

Mr. ARENS. You are appearing today in response to a subpoena which was served upon you?

Mr. FELDMAN. I am, indeed.

Mr. ARENS. And you are represented by counsel?

Mr. FELDMAN. I am, sir.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. TUCKER. C. Ewbank Tucker of the Kentucky Bar, and Bishop of the African Methodist Episcopal Zion Church.

Mr. ARENS. Mr. Feldman, where and when were you born?

(The witness conferred with his counsel.)

Mr. FELDMAN. I decline to make answer to that question on the grounds of the fifth amendment and the first amendment.

Mr. ARENS. Do you honestly apprehend, sir, that if you told this committee where and when you were born, you would be supplying information which might be used against you in a criminal proceeding?

Mr. FELDMAN. My answer is the same, sir. I decline to make answer on the grounds of the fifth amendment and the first.

Mr. ARENS. Now, Mr. Feldman, have you always been known under the name of Eugene Feldman?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth.

The CHAIRMAN. Before we go further, Mr. Feldman, you are directed to answer the question as to your place of birth.

Mr. FELDMAN. May I have the question, please, the original question?

Mr. ARENS. The question is, sir, where and when were you born?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth.

Mr. ARENS. How long have you lived at your present place of address?

Mr. FELDMAN. I decline to make answer to that question on the grounds of the first amendment and the fifth.

Mr. ARENS. How long have you lived in Chicago?

Mr. FELDMAN. I decline to make answer to that question on the grounds of the first amendment and the fifth amendment.

Mr. ARENS. Where did you live immediately prior to your present address?

Mr. FELDMAN. I decline to make answer to that question and my reason is on the grounds of the first amendment to the Constitution and the fifth amendment.

The CHAIRMAN. I think I ought to explain to you that refusal to answer these questions, in the judgment of this committee, very clearly constitutes contempt. If you wish to answer the question, or any of the questions that have been asked you, you may do so.

Am I to assume that because of your silence you do not desire to answer any of the questions that have been asked you thus far?

Mr. FELDMAN. May I have your question to me, please, again?

The CHAIRMAN. I have warned you, gratuitously, perhaps, that your failure to answer these questions, in my judgment, constitutes contempt of Congress; and I am asking you, giving you the opportunity, to answer any of these questions in order that you not be placed in that position.

Mr. FELDMAN. Was that a statement, sir, or a question to me?

The CHAIRMAN. I am asking you if you care to answer any of the questions.

(The witness conferred with his counsel.)

Mr. FELDMAN. I decline to make answer to that on the basis of the first amendment and the fifth.

Mr. ARENS. Mr. Feldman, are you a Southerner?

Mr. FELDMAN. I decline to answer that question, sir, on the basis of the first amendment to the Constitution and the fifth.

Mr. ARENS. Are you an editor of the Southern Newsletter?

Mr. FELDMAN. I decline to make answer to that on the first amendment, which grants freedom of the press, and the fifth amendment to the Constitution of the United States.

The CHAIRMAN. Why do you think you are not required to answer the question because of the fifth amendment?

Mr. FELDMAN. I decline to make answer to that, sir, based on the first amendment and the fifth.

The CHAIRMAN. I understand you to mean that your refusal to answer because of the fifth amendment protection is because if you answer the question as to whether or not you are connected with this paper, you might be subject to criminal prosecution; is that it?

(The witness conferred with his counsel.)

Mr. FELDMAN. I would like to answer that the fifth amendment explains that a witness need not answer because it might tend to incriminate. My answer is that, sir.

The CHAIRMAN. What is there criminal in that publication?

Show him the publication, Mr. Arens.

Mr. ARENS. Mr. Feldman, I display to you now a series of publications of the Southern Newsletter, current ones, at least that we have, the May and June issues, and other back numbers of the Southern Newsletter; and I ask you while you are under oath to please tell this committee if it is not a fact that you are the editor and publisher of the Southern Newsletter.

Mr. FELDMAN. I refuse to make answer to that on the basis of the first amendment, which grants liberty of the press, and the fifth amendment, sir.

(Documents marked "Feldman Exhibit No. 1," and retained in committee files.)

The CHAIRMAN. Is there anything in those Newsletters concerning the release of these clergymen from Communist China?

Mr. ARENS. I have perused those Newsletters, Mr. Chairman, and I have not seen anything of that character in the Southern Newsletter.

Now, Mr. Feldman, I should like to display to you a photostatic reproduction of an application for a post office box at Louisville, Kentucky, for the Southern Newsletter, Eugene Feldman, editor, Perry Cartwright, I believe, business manager, and the reference is, Dr. Oakley C. Johnson of New York City. This application was filed in March of 1957 and the post office—

Mr. JACKSON. Mr. Chairman, what is the document?

Mr. WILLIS. An application.

Mr. ARENS. It is a photostatic copy, Mr. Jackson, of an application for a post office box in Louisville, Kentucky, a post office box for the Southern Newsletter.

The record will reflect that this particular witness has told us his residence is presently, and has been, in Chicago, Illinois. Kindly look at that application for the post office box and tell this committee, while you are under oath, whether or not that is a true and correct reproduction of an original application filed by yourself as editor and publisher of the Southern Newsletter for a post office box in Louisville, Kentucky.

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth.

(Document marked "Feldman Exhibit No. 2," and retained in committee files.)

Mr. ARENS. Have you lived in the South?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth amendment, sir.

Mr. ARENS. Have you worked in the South?

Mr. FELDMAN. I decline to answer on the grounds of the first amendment and the fifth, sir.

Mr. ARENS. Are you a Southerner?

Mr. FELDMAN. I decline to answer on the grounds of the first amendment and the fifth, sir.

Mr. ARENS. I display to you now an original publication called the Militant—it is a publication in New York City—under date of March 31, 1958. In this article we see a description of a Chicago rally, the Washington Park Free Speech Forum, and in which it is stated, Eugene Feldman, editor, Southern Newsletter, is going to make a speech there on the subject, "A White Southerner Looks at Civil Rights for Negroes," and so forth. Kindly look at that announcement, which was presented in that Militant paper, and tell us whether or not you were the speaker and that was the subject and whether or not you permitted yourself to be characterized as a Southerner to make this speech in the North?

Mr. FELDMAN. I decline to answer on the grounds of the first amendment, granting freedom of speech, and the fifth amendment, sir.

(Document marked "Feldman Exhibit No. 3," and retained in committee files.)

Mr. ARENS. Does the Southern Newsletter have a postal permit to mail its publication?

Mr. FELDMAN. Is your question complete, sir?

Mr. ARENS. Yes, sir.

Mr. FELDMAN. I decline to answer on the grounds of the first amendment and the fifth, sir.

Mr. ARENS. I lay before you now an original envelope and copy of the Southern Newsleter addressed into Georgia here, to Decatur, Georgia—Southern Newsletter, Box 1307, Louisville 1, Kentucky. I don't have the exact date, but it is very recent.

Kindly look at that and tell us whether or not that was mailed by you, or under your direction, from Chicago, Illinois.

Mr. FELDMAN. I decline to answer on—and the reason I decline is the declination is based on the first amendment, granting freedom of speech and press, and the fifth amendment, sir.

(Document marked "Feldman Exhibit No. 4," and retained in committee files.)

Mr. ARENS. Where are you employed?

Mr. FELDMAN. I decline to make answer on the ground of the first amendment and fifth, sir.

Mr. ARENS. Do you honestly apprehend, sir, that if you told this committee truthfully where you are employed, you would be supplying information which might be used against you in a criminal proceeding?

Mr. FELDMAN. I decline to make answer, sir, on the grounds of the first amendment and the fifth.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the witness be ordered and directed to answer the last principal question because it is designed to test his good faith in invoking the fifth amendment.

The CHAIRMAN. Yes, I think so. You are directed to answer the question, Mr. Feldman.

Mr. FELDMAN. My answer is the same, sir. I decline to make answer on the grounds of the first amendment and the fifth.

Mr. ARENS. Now, sir, do you know a person by the name of Armando Penha?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth, sir.

Mr. ARENS. Would you look over here to your left, please, sir, and see the gentleman seated here at the table and tell us whether or not you have ever seen him before and, if so, under what circumstances?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth, sir.

Mr. ARENS. Mr. Penha swore just a few moments ago while he was testifying before this committee, in essence, that while he was an undercover agent of the FBI in the Communist Party, he knew you, sir, as a member of the Communist Party and as a colonizer in the South. We would like to give you an opportunity now, while you are under oath, to deny that identification of yourself. Do you care to avail yourself of that opportunity?

Mr. FELDMAN. I refuse to make answer and my refusal is based on the first amendment and the fifth, sir.

Mr. ARENS. Do you know a person by the name of Perry Cartwright?

Mr. FELDMAN. I decline to make answer to that question sir, and my refusal is based on the first amendment to the Constitution of the United States and the fifth, sir.

Mr. ARENS. Mr. Perry Cartwright is one of your associates in the publication of the Southern Newsletter, is he not?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth.

Mr. ARENS. Do you know Carl and Anne Braden of Louisville, Kentucky?

Mr. FELDMAN. I decline to make answer, sir, on the grounds of the first amendment and the fifth.

Mr. ARENS. Are Carl and Anne Braden in Louisville, Kentucky, your colleagues in the work of the Southern Newsletter in that area of the South?

Mr. FELDMAN. Excuse me, sir. Would you permit me to have some water?

The CHAIRMAN. Yes, indeed.

Mr. FELDMAN. Would you ask that same question again, please?

Mr. ARENS. Yes. Are Carl and Anne Braden of Louisville, Kentucky, your associates or colleagues in the publication and work of the Southern Newsletter?

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth, sir.

Mr. ARENS. I have in my hand, and I shall now display to you, an exhibit, a letter which accompanied the latest edition of the Southern Newsletter, Post Office Box 1307, Louisville, Kentucky; Eugene Feldman, Editor; Perry Cartwright, Circulation; addressed to "Dear Reader," attacking the House Committee on Un-American Activities for its proposed trip here to the South and attacking this committee on a number of grounds for conducting this so-called witch hunt here in the South.

Kindly look at this letter and tell this committee while you are under oath, sir, whether or not you are the author of that letter.

(The witness conferred with his counsel.)

Mr. FELDMAN. I decline to make answer on the grounds of the first amendment and the fifth, sir.

The CHAIRMAN. What crime do you think you might be charged with for attacking this committee?

Mr. FELDMAN. In answer to your question, Representative Walter, I say I decline to make answer on the grounds of the first amendment and the fifth, sir.

(Document marked "Feldman Exhibit No. 5," and retained in committee files.)

Mr. ARENS. I display to you now, if you please, sir, a copy of the National Guardian, a publication which has been cited as a publication under Communist control, dated July 9, 1956, in which there appears, under a Winston-Salem dateline, a letter announcing the formation and publication of a new publication called the Southern Newsletter. This letter in the National Guardian is authored, according to its format, by Eugene Feldman, Post Office Box 1364, Winston-Salem, North Carolina.

Kindly look at that exhibit as I display it to you, sir, and tell this committee while you are under oath, whether or not you authored that letter.

Mr. FELDMAN. I refuse to make answer on the grounds of the first amendment, granting freedom of the press, and the fifth, sir.

(Document marked "Feldman Exhibit No. 6," and retained in committee files.)

Mr. ARENS. Is the Reverend Don West of Georgia affiliated with the Southern Newsletter as a contributor?

Mr. FELDMAN. I refuse to make answer on the grounds of the first amendment, granting freedom of the press and freedom of religion, and the fifth amendment, sir.

Mr. ARENS. I lay before you now a copy of the Southern Newsletter of April 1958, in which the name of Don West appears as one of the contributors, and call your attention to the article contributed by him and ask you whether or not, to your certain knowledge, he has a definite connection with the Southern Newsletter.

Mr. FELDMAN. I refuse to make answer on the grounds of the first amendment, granting freedom of the press and freedom of religion, and the fifth amendment.

The CHAIRMAN. Why is your freedom of religion affected because you are asked a question about somebody else?

Mr. FELDMAN. Representative Walter, I refuse to make answer to your question on the basis of the first amendment and the fifth.

The CHAIRMAN. All right.

(Document marked "Feldman Exhibit No. 7," and retained in committee files.)

Mr. ARENS. Tell us whether or not, to your certain knowledge, Mr. and Mrs. Carl Braden are connected with the Southern Newsletter.

Mr. FELDMAN. I refuse to make answer to that on the basis of the first amendment, granting freedom of the press, and the fifth amendment.

Mr. ARENS. To your certain knowledge are Anne and Carl Braden members of the Communist Party?

Mr. FELDMAN. In answer to your question, sir, I refuse to answer that on the basis of the first amendment to the Constitution of the United States and the fifth amendment.

Mr. ARENS. To your certain knowledge is Perry Cartwright a member of the Communist Party?

Mr. FELDMAN. I refuse to answer that on the grounds of the first amendment and the fifth amendment.

Mr. ARENS. To your certain knowledge is Charles J. Coe a member of the Communist Party?

Mr. FELDMAN. I refuse to answer that on the grounds of the first amendment and the fifth amendment.

Mr. ARENS. You know, of course, that Charles Coe has been repeatedly identified by former undercover agents of the FBI in the Communist Party as a member of the Communist Party?

Mr. FELDMAN. Is that a statement, sir, or a question?

Mr. ARENS. Do you know that as a fact? Are you aware of the fact that he has been identified as a Comrade?

Mr. FELDMAN. I refuse to make answer on the grounds of the first amendment and the fifth, sir.

Mr. WILLIS. May I ask a question?

The CHAIRMAN. Yes, sir.

Mr. WILLIS. Mr. Counsel, do I understand the procedure about this publication to be about this: That the Newsletter and the Southerner are printed in Chicago and then sent in bulk to Louisville for distribution from that southern point?

Mr. ARENS. At least in part. That is the information which we have, Mr. Willis. We know, as has been developed in this record, that Mr. Feldman is the editor, he lives in Chicago; that they have a post office box in Louisville. We know that some of the publications themselves are actually sent from Chicago, because we have here postmarks from Chicago on some of the publications.

The CHAIRMAN. The only thing Southern about it is that it originates in South Chicago.

Mr. ARENS. Mr. Chairman, we had a number of other questions that we would have liked to have propounded to this witness, but it is quite obvious that we would be wasting the committee's time because this witness will not answer the questions which we feel are of vital concern.

The CHAIRMAN. Any questions?

Mr. JACKSON. Mr. Chairman, I have just one I think we should ask. Are you now, Mr. Feldman, or have you ever been, a member of the Communist Party?

Mr. FELDMAN. Mr. Jackson, I refuse to make answer to your question, sir, and my refusal is based on the grounds of the first amendment and the fifth amendment to the Constitution of the United States.

Mr. JACKSON. Are you now, or have you ever been, a member of the Ku Klux Klan?

Mr. FELDMAN. I refuse to make answer, sir, on the grounds of the first amendment and the fifth.

Mr. JACKSON. Then you are consistent.

The CHAIRMAN. The committee will stand in recess until two o'clock.

(Whereupon, at 12:30 p. m., the subcommittee recessed to reconvene at 2 p. m. the same day.)

AFTERNOON SESSION, TUESDAY, JULY 29, 1958

The CHAIRMAN. The committee will be in order.

(Committee members present: Representatives Walter, Willis, Tuck, and Jackson.)

The CHAIRMAN. Mr. Arens, will you call your next witness, please?

Mr. ARENS. Mr. Irving Fishman, kindly remain standing while the chairman administers an oath to you.

The CHAIRMAN. Mr. Fishman, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FISHMAN. I do.

TESTIMONY OF IRVING FISHMAN

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. FISHMAN. My name is Irving Fishman. I live in New York. And I am Deputy Collector of Customs with the Treasury Department, assigned to the enforcement and control of the importation of Communist political propaganda, on a country-wide basis.

Mr. ARENS. How long have you been with the Customs Service and how long have you been assigned to this particular project of maintaining surveillance on the importation of Communist propaganda?

Mr. FISHMAN. I have been with the Customs Service some 30 years and with this project about 10.

Mr. ARENS. Mr. Fishman, give us just a word again on this record as to the principal provisions of the law, the Foreign Agents Registration Act, which are applicable to this project of Communist propaganda.

Mr. FISHMAN. The Customs Service, in a joint effort with the United States Post Office Department, is charged with the responsibility of prohibiting the importation of subversive materials which advocate treason or insurrection against the United States. We also have the joint responsibility with the Justice Department to enforce certain provisions of the Foreign Agents Registration Act.

The Foreign Agents Registration Act is a disclosure type of statute. It contemplates that those people in the United States who desire to read foreign propaganda be made aware of the source of the material by the proper labeling or identification thereof. Thus a reader has an opportunity to evaluate the source. As we understand it, the statute does not restrict or prohibit an individual from reading any printed material which emanates from the Soviet bloc countries.

The Customs Service and the Post Office Department have established three control units: One in New York, one in San Francisco, and one in Chicago. To these units we direct most of the printed material which has its origin in the Soviet Union and in the Soviet bloc countries.

Mr. ARENS. Mr. Fishman, in the simplest terms, the Foreign Agents Registration Act requires that an agent in the United States of a foreign power, who is disseminating political propaganda, must himself register with the Department of Justice and must cause to be affixed to the political propaganda a labeling or a stamp so that the reader will know that he has Communist propaganda, is not that correct?

Mr. FISHMAN. That is correct.

Mr. ARENS. During the course of your 30-odd years' service in the Bureau of Customs of the United States Treasury Department, have you ever seen a single item of Communist propaganda which has been imported into the United States which has been labeled in accordance with the law, in accordance with the Foreign Agents Registration Act?

Mr. FISHMAN. None on its way into the United States. I have seen some exhibits in the Library of Congress which have borne the necessary labeling.

Mr. ARENS. You have before you today, Mr. Fishman, some specimens of the Communist propaganda that have been imported, or in the process of being imported, through New York City, is that correct?

Mr. FISHMAN. That is correct.

Mr. ARENS. That is one of the control points?

Mr. FISHMAN. That is correct.

Mr. ARENS. Before I proceed further, I should like to have you tell this committee now the overall statistics on the Communist propaganda that is being imported into the United States from the Iron Curtain countries through the various ports of entry.

Mr. FISHMAN. The volume increases steadily. In 1955 there were imported into the United States some 2,565,000 mail packages of printed matter from the Soviet bloc countries. These, we estimate, contained over 5,000,000 pieces of printed matter intended for dissemination in the United States.

In 1956 that increased by almost a million mail packages.

In 1957 it did increase by a million and in 1958—the first six months of 1958—there was a total of 2,454,000 packages containing 4,786,000 pieces of printed matter. This, of course, was a 6-month period in 1958. We haven't added the last 2 months.

Mr. ARENS. Mr. Fishman, this is all material emanating from an Iron Curtain country, is it not?

Mr. FISHMAN. That is right.

Mr. ARENS. All imported into the United States, is that correct?

Mr. FISHMAN. That is correct.

Mr. ARENS. All of it disseminated over the United States?

Mr. FISHMAN. Intended for dissemination. Of course some of it we have been able to control.

Mr. ARENS. Mr. Fishman, in addition to this material which you are speaking about which is imported from abroad, this Communist propaganda, is there Communist propaganda emanating from non-Communist countries abroad which is imported into the United States?

Mr. FISHMAN. Yes. As our control becomes more effective, a great deal of this same printed matter is sent into the United States through friendly countries. Because of budgetary difficulties, we are unable to exercise the same kind of control over all foreign mail matter; neither are we as much concerned with printed matter which comes from friendly countries. So that a good deal of this material is passed without examination. Then, too, in order to cause the detention of any of these importations under the Foreign Agents Registration Act, we must establish agency relationship. This is not as simple where material comes from a friendly country.

Mr. ARENS. Is the Communist propaganda which is coming into the United States from friendly countries, as distinct from the Iron Curtain countries, on the increase or on the decrease?

Mr. FISHMAN. On the increase.

Mr. ARENS. Do you have any way of giving us an appraisal as to the volume of that Communist propaganda that is hitting our shores?

Mr. FISHMAN. No. That would only be an estimate and we just haven't the figures at all.

Mr. ARENS. At the request of the chairman of the committee, did you, in the course of the recent past, make a spot check of the Communist propaganda coming through one port of entry, through New York City, destined to some 3 or 4 of the typical southern states?

Mr. FISHMAN. Yes. At the suggestion of the committee we segregated and set apart for a brief period of time that portion of the mail destined for this area.

Mr. ARENS. By this area you mean the Georgia, Alabama, Mississippi area, is that correct?

Mr. FISHMAN. That is correct.

Mr. ARENS. Over what period of time did you make this spot check?

Mr. FISHMAN. Two weeks.

Mr. ARENS. Do the exhibits here represent a typical sampling of this material?

Mr. FISHMAN. That is right. Most of the exhibits were chosen from material destined for this area.

Mr. ARENS. Tell us, if you please, sir, what type of mail this is which comes into the Southern States.

Mr. FISHMAN. The Communist propaganda program is directed, for the most part, to those states where the citizenship has its heritage in foreign countries, countries which are now under Communist control. Areas like the State of Georgia and other southern states get a much more selected type of material. Here the volume is much less. The percentage of material sent here is far less than it is in some of the northern states. But it is selected more carefully. It is sent to people who probably will disseminate and redistribute it in domestic and local publications. The propaganda program currently is directed, first of all, to the general type of Communist material; then, too, a good deal of effort has recently been directed to the student at the secondary schools in the United States, the colleges, and universities. And, of course, the redefection program or the "return to the homeland" program has been on the constant increase. We have made very careful efforts to halt the flow of this homeland material into the United States because it is all unsolicited.

The Committee on Un-American Activities has been very helpful in this respect: They have made the public aware that the redefection program is an overall Communist type of propaganda program. And this was important in this way: Redefection material is sent in—

Mr. ARENS. Excuse me. Would you clarify what you mean by redefection? Our record may not be clear on that here.

Mr. FISHMAN. The Communist propaganda machine, a number of years ago, turned out a good deal of material consisting of individually written letters to people who have their origin in foreign countries, asking them to return home; promising them forgiveness for any crimes they may have committed against the administration; assuring them that there was plenty, and that the situation in the particular country was far better than it was in the United States; and telling them that they owed it to their country of origin to return and give the benefits of their experience, their knowledge, to the foreign country. This material was individually addressed, and many of the recipients were alarmed because they felt that they were being subjected to pressures from outside of the United States. We received many letters asking us to withhold delivery of this material. Members of the Congress sent us many complaints that they had received; and it was as a result of a hearing before this committee, the Committee on Un-American Activities, that the public was made aware that this was an overall propaganda program, and many of the fears of the recipients were allayed.

The program, however, has continued to be on the increase; and as we have taken steps to control it, efforts to forward this type of material into the United States have increased, so much so that the senders have reduced the size of the letter and are now sending it in very small packets. Then, too, a good deal of it is disguised in time tables and other material, and the recipients are asked to acknowledge receipt, something they never were asked to do before this.

Mr. ARENS. As to this sampling which was made of Communist propaganda destined to this Mid-South area, does any of it contain a label that "this is Communist propaganda in accordance with the Foreign Agents Registration Act"?

Mr. FISHMAN. No. It is only by indirection and if you study the publication that one may become aware of its origin.

To complete the statement I made concerning this homeland material, I have a translation from the Russian, which I would like to read, at least an extract from it. It is addressed "Dear Compatriot," and reads as follows:

Having received your address from one of our compatriots, we decided to address this letter to you.

You live in foreign lands for a long time. We do not know what circumstances have torn you away from your homeland, from your family and friends and have doomed you to become a foreigner, but we are sure, that no matter where you are the holy image of the mother homeland always lives in your conscience, as it lives in the conscience and heart of everyone of our compatriots abroad. This is why we are taking it as our duty to help every Soviet citizen, who has found himself outside of his homeland, to come closer to the homeland, to be in touch with its life, successes in work, science and culture, to realize yourself to be a true son of the great Soviet people, to help our compatriots to withstand bourgeoisie and emigrant propaganda which, not wanting to see the successes of the Soviet people, pours slanders upon our homeland.

We know that not all Soviet citizens will be able to return to the homeland. We even don't consider this as our goal. But we wish to help our compatriots to reestablish contact with the homeland, to strengthen in them the feeling of pride for the homeland.

And so on and so forth. To continue from the letter:

If our letter to you will awaken in you some interest to the homeland or will provoke a desire to reestablish with relatives in the Soviet Union ties broken for one reason or another, or will make you think about your own position, write to us. We will give you cooperation and moral support.

This goes on to tell how to get in touch with the committee and advise that there is a broadcast every day.

Mr. ARENS. Why would they be sending that, Mr. Fishman? Do you have a conclusion you reached in your own mind on that?

Mr. FISHMAN. I doubt very much that any of this material has any real effect, and I doubt also whether there will be a wholesale exodus of people from the United States back to the Soviet Union, but it does continue to strengthen the distribution scheme in the United States and it permits dissemination to many more people who can be continuously bombarded with this type of material.

Mr. ARENS. By "this material," you are alluding exclusively at the moment to the defection material, are you not?

Mr. FISHMAN. Yes. Once having established a person's identity and address here in the United States, all of this other propaganda type of material follows, plus requests for funds and so on and so forth.

Mr. ARENS. Mr. Fishman, this Communist propaganda here, various publications, of which you have made a sampling goes through the United States mails, does it not?

Mr. FISHMAN. It does.

Mr. ARENS. The United States mails are not self-sustaining, are they?

Mr. FISHMAN. Not as I understand it.

Mr. ARENS. In other words, Mr. Fishman, the taxpayers of this country are, by their subsidy to the Post Office Department, paying

part of the transportation costs of this Communist propaganda? Is that correct?

Mr. FISHMAN. That is so in my opinion.

Mr. ARENS. Mr. Fishman, in what languages does this Communist propaganda appear in these various publications?

Mr. FISHMAN. Most of these exhibit publications are printed in 11 languages. A good deal of it is in English, or printed in the English language, but most every publication here is also reprinted in at least half a dozen languages other than English.

Mr. ARENS. Does some of this Communist propaganda go in transit through the United States to other areas in the Western Hemisphere?

Mr. FISHMAN. It does and, more particularly, recently to Latin America.

Mr. ARENS. From whence does it emanate?

Mr. FISHMAN. A good deal of it is printed by the Soviet Embassies in South America, one of the greatest distribution centers being in Mexico.

Mr. ARENS. Would you kindly tell us something about the content of each of the several specimens which you have there?

Mr. FISHMAN. All of this material of course is cleverly written by professional writers. They play skillfully on known and recognized grievances. We have chosen several exhibits, and I have prepared for committee use samples of articles taken from some of the newspapers before me.

The Literary Gazette, No. 86, July 19, 1958, is the organ of the Board of Union Writers of USSR, and among the articles in it is one which reports strong condemnation against American aggression in the Middle East. "Hands Off Arab Countries" is the title of one article; the second one, "Yankees Get Out of Lebanon." There are pictures and descriptions of the anti-United States demonstrations in Moscow with very strong attacks on the United States. Another article, "In the Name of Oil," strongly attacks the United States on its capitalistic greediness as the only reason for its intervention in Lebanon. Another article is entitled "To Cease Immediately the Game With Fire." This is a strongly anti-American review by the foreign press which accuses the United States of all evils in connection with the Middle East.

The propaganda, as you will note from these exhibits, is not very far behind what goes on in the United States; and actually we frequently find ourselves in the position where we obtain more current news from these foreign news bulletins issued abroad than we do from our own newspapers.

Here is a Chinese daily bulletin that is issued regularly, which contains very current news on what is alleged to be going on in Washington. Here is an article entitled "Hands Off Lebanon," with strong attacks against United States policies, said to consist of interference in the Middle East.

Mr. ARENS. Are there publications designed for particular groups in the United States, such as students and women and youth and the like?

Mr. FISHMAN. That is a special direction that the Communist program has recently taken. All of this type of publication, "World Student News," "Students Say No," "News Service," and so on and so forth; all are directed to students. There are two major distribution

centers for student material, one located in Czechoslovakia and the other located in Hungary. Both groups are very active. They claim some 97 million members around the world; they keep their program active by continually setting up world-wide meetings.

For example, the program for the next few months shows a meeting in August in the German Democratic Republic on the subject "Safeguarding Peace and Strengthening Friendship." This is sponsored by the International Union of Students. The second meeting, in August, in Moscow is on the subject "Peaceful Uses of Atomic Energy." The third in Cracow, Poland, on August 16, is entitled "Social and Economic Problems of Students." The fourth, in Peiping, China, September 4th to 13th, is one of the large meetings. It is the Fifth Congress of the International Union of Students. Another one in Peiping on student life and activities, and a very recent one—just added—in December in the United Arab Republic, place yet unselected, will deal with current Near East problems.

Mr. ARENS. Can you tell us a little more, Mr. Fishman, about the recipients of this material in the United States, particularly in the South to which we are inviting your attention in this session?

Mr. FISHMAN. The committee is aware of the position of the Treasury Department, which maintains that the names and addresses of the recipients of this material are to remain classified and available to the committee for official use only. We have included in our last report submitted to the committee a list of the schools in this area that have been receiving this material regularly. I can refer to several: The Georgia State College for Women, Emory University, Berry College, University of Georgia in Athens, Mercer University, Agnes Scott College, Georgia Institute of Technology, the Atlanta University, Atlanta School of Social Work, the Teachers College of the State, and so on.

Mr. ARENS. Mr. Fishman, this material is unsolicited as far as these schools are concerned, is it not?

Mr. FISHMAN. It is. It is sent to the editors of every college newspaper printed in the United States. Actually, in 1955 some 111,000 such individually addressed student packages were sent to schools in the United States. In 1958, in six months, over 140,000 individually addressed pieces of mail were sent to student groups in the United States.

Mr. ARENS. Were any of these labeled so a recipient would know, in accordance with provisions of the Foreign Agents Registration Act, that the material he is reading is Communist material?

Mr. FISHMAN. No. As a matter of fact, as I mentioned, these groups, the International Union of Students and the World Federation of Democratic Youth are both supposedly independent proper groups. They claim association with some of the recognized American student organizations. Many of these groups around the country have disclaimed this association, but they still continue to list them as associated groups.

Mr. ARENS. Does this material on this sampling get into Mississippi as well as Georgia?

Mr. FISHMAN. Oh, yes.

Mr. ARENS. Does it go into Alabama?

Mr. FISHMAN. It does.

Mr. ARENS. You pointed out 3 or 4 states that you used in sampling here in the South.

Mr. FISHMAN. That is right. We have concentrated on Georgia, of course, in the last 2 weeks.

Mr. ARENS. Are most of the educational institutions in Georgia the targets of this propaganda?

Mr. FISHMAN. It is sent to the schools here and universities, consistently, as one way of getting it read. In some college libraries a good deal of this material is made available to students.

Mr. ARENS. Mr. Fishman, in times past, the committee has solicited your assistance in legislative proposals. The chairman of this committee, as you know, has introduced legislation, some of which is embodied in a bill, H. R. 9937, pending before the committee at the present time. Some of the provisions of that bill undertake to cope with this problem of Communist propaganda coming into the United States unlabeled.

Are you familiar with those provisions of H. R. 9937 which undertake to cause the labeling of this material prior to its actual physical importation?

Mr. FISHMAN. I am.

Mr. ARENS. Would you give us your expression on that, please, sir?

Mr. FISHMAN. We have long attempted to cope with this very problem. The Department of Justice has held that the labeling of this material, the requirement for labeling of this material, does not attach itself until the foreign agent, the disseminator in the United States, distributes the material in the United States. This leaves it pretty much up to the registered agent to decide, first of all, whether it is Communist propaganda and, second, whether he will label it. We have long sought for a requirement, and the new bill will provide it, that this material must be labeled before it enters the United States and before it is delivered to the recipient in the United States. Such a requirement will facilitate our work very considerably.

Mr. ARENS. Do you have any other comments to make respecting those provisions of H. R. 9937 which undertake to correct this particular problem?

Mr. FISHMAN. No. That is the most significant one as I see it.

Mr. ARENS. Would it be of help, in your judgment, Mr. Fishman, if the attempted control of this flood of Communist propaganda which is imported were centralized in a single agency of the Government?

Mr. FISHMAN. It would. It is currently pretty much a business of cooperation between our agency, the Post Office, and Justice. I think it would help a lot if it were all concentrated in one agency.

Mr. ARENS. Would any help come from additional translators?

Mr. FISHMAN. It would. We now, as I reported, have 3 control units. We can use other control units around the country.

Mr. ARENS. Mr. Chairman, we have in other proceedings, as I am sure the chairman will recall, probed further on specific details of the legislative phase of Mr. Fishman's information. I would suggest that would conclude the staff interrogation of Mr. Fishman at this time.

The CHAIRMAN. Any questions?

Mr. WILLIS. No questions.

The CHAIRMAN. Any questions, Mr. Jackson?

Mr. JACKSON. No questions.

Mr. TUCK. No questions.

The CHAIRMAN. I noticed, Mr. Fishman, some of these magazines are really done up in great shape. They are fine looking. They are entirely in English without a word of advertising, not a line of advertising. Is this the type of magazine that is being sent to these schools for reading?

Mr. FISHMAN. It has been very apparent over the years. The cost of this material is obviously subsidized. It would be impossible to print and sell this material for the subscription price. Frequently, you can have a year's subscription to one of these publications for a dollar. In the absence of advertising, someone must be paying for printing these publications.

The CHAIRMAN. Some of this is really beautiful work.

Mr. FISHMAN. They compare very favorably with American printed magazines.

The CHAIRMAN. Yes.

Mr. FISHMAN. In format only, I hope.

The CHAIRMAN. I am sure that is the only comparison, Mr. Fishman.

Thank you very much, Mr. Fishman.

Mr. ARENS. Mr. Chairman, could we suspend for just a couple of minutes while we make arrangements to get this material moved aside?

The CHAIRMAN. Yes.

(At this point Representatives Willis, Tuck, and Jackson left the room.)

Mr. ARENS. Mr. Perry Cartwright, kindly come forward.

The CHAIRMAN. Mr. Cartwright, will you raise your right hand, please.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. CARTWRIGHT. I do, sir.

The CHAIRMAN. Sit down, please.

TESTIMONY OF PERRY CARTWRIGHT, ACCOMPANIED BY COUNSEL, C. EWBANK TUCKER

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. CARTWRIGHT. Perry Cartwright, 5429 —

Mr. ARENS. Excuse me just a minute, Mr. Cartwright. Would it be convenient for you not to get so close to the microphone?

Mr. CARTWRIGHT. How is this?

The CHAIRMAN. Fine.

(At this point Representative Willis entered the hearing room.)

Mr. CARTWRIGHT. Perry Cartwright, 5429 Ridgewood Court, Chicago 15, Illinois.

Is that modulated properly?

Mr. ARENS. That is all right.

And your position, please, sir?

Mr. CARTWRIGHT. I am a salesman.

Mr. ARENS. You are appearing today in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. CARTWRIGHT. Yes, sir.

Mr. ARENS. And you are represented by counsel?

Mr. CARTWRIGHT. I am, sir.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. TUCKER. C. Ewbank Tucker—

Mr. WILLS. I cannot hear you.

Mr. TUCKER. —of the Kentucky State Bar.

Mr. ARENS. Where are you employed, Mr. Cartwright?

Mr. CARTWRIGHT. By the Owen Window Company in Chicago.

Mr. ARENS. Have you ever used any name other than the name Perry Cartwright?

Mr. CARTWRIGHT. Yes.

Mr. ARENS. Kindly tell us any other name that you used.

Mr. CARTWRIGHT. Fred Perry. I wrote at one time under the name of Fred Perry.

Mr. ARENS. Where did you write under the name of Fred Perry?

Mr. CARTWRIGHT. During my 10 years or so in the Socialist organization; non-Communist Socialist organization that I belonged to.

Mr. ARENS. Over what period of time were you in that organization?

(At this point Representative Tuck entered the hearing room.)

Mr. CARTWRIGHT. Oh, approximately '46 to '56, two organizations.

Mr. ARENS. Do you have any other occupation, other than your occupation as salesman?

Mr. CARTWRIGHT. Are you referring to my capacity with the Newsletter, sir?

Mr. ARENS. Yes, sir.

Mr. CARTWRIGHT. Yes, sure.

Mr. ARENS. What is your capacity with the Southern Newsletter?

Mr. CARTWRIGHT. I am business manager or sometimes listed as circulation manager.

Mr. ARENS. How long have you occupied that post?

Mr. CARTWRIGHT. Since, I believe I am right on this, this spring of '57, approximately at that time.

Mr. ARENS. Can you tell us something of the circulation of the Southern Newsletter?

Mr. CARTWRIGHT. Yes. It goes largely about 85 percent to Southern white people. We find that there are many young Southerners who don't go along with Mr. Walter's friend, the great Governor of Georgia, on this business of segregation.

Mr. ARENS. In what States does the Southern Newsletter circulate?

Mr. CARTWRIGHT. We find many young Southerners in all the Southern States are beginning to break with this business of racism—

Mr. ARENS. Will you kindly tell us, does it circulate in most of the Southern States?

Mr. CARTWRIGHT. I believe we have them in every single State, if I am not wrong on that.

Mr. ARENS. Can you give us something on appraisal as to the aggregate or total circulation per month or per week?

(At this point Representative Jackson returned to the hearing room.)

(The witness conferred with his counsel.)

Mr. CARTWRIGHT. Oh, well, sir, it has been going very rapidly. To what month do you refer?

Mr. ARENS. Any period of time. You are the circulation manager of the Southern Newsletter, you tell us. We want to inquire from you what the circulation is.

Mr. CARTWRIGHT. Our response, as I say, considering our limited resources, is very gratifying with white Southern young people. We have grown from practically nothing to about 2,100 now.

Mr. ARENS. Where is the paper published?

Mr. CARTWRIGHT. The mailing address is in Post Office Box 1307, Louisville, Kentucky.

Mr. ARENS. Where is it printed?

Mr. CARTWRIGHT. The paper is printed in Chicago.

Mr. ARENS. Does it have a postal permit to use the second-class mailing privilege?

Mr. CARTWRIGHT. You have me there, sir. I honestly don't know the answer to that question.

Mr. ARENS. What type of postage do you put on the individual Southern Newsletter?

Mr. CARTWRIGHT. 2-cent stamp. Whatever class that falls into.

May I answer a little more on the Chicago business, sir?

Mr. ARENS. Yes, sir, please.

Mr. CARTWRIGHT. Since I am cooperating with you and I am going to try to answer your questions, if I can—we are obliged to publish in Chicago because, with the pressures that have been exercised on us, we can't make a living, the segregation, such as this Governor here today, and the pressure they can bring make it very nearly impossible for a liberal white Southerner to make a living.

Mr. ARENS. Would you kindly tell us—and the record does not presently reflect it by affirmative testimony—who is the editor of the Southern Newsletter?

Mr. CARTWRIGHT. Well, Mr. Arens, as you see, I am testifying freely about myself; but one reason I can't be a Communist is because I understand that that is the sort of thing that goes on in Communist countries, testifying about other people, informing. I speak freely about my own connections and my own business, my own theory, and so on; but when it comes to talking about other people, I can't do that, sir.

Mr. ARENS. Do you know who is the editor of the Southern Newsletter?

Mr. CARTWRIGHT. I believe I covered that in the previous answer.

Mr. ARENS. Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question as to who is the editor of the paper of which he is a circulation manager.

The CHAIRMAN. You are directed to answer the question.

Mr. CARTWRIGHT. Chairman Walter, I understand this is one of the reasons that the United States Government, including your committee, is very much opposed to the Soviet Union, that they force people to talk about their friends and associates.

The CHAIRMAN. You are not being forced to talk about anybody. You are merely being asked who is the editor of the paper that employs you. You are not being asked to say anything about him at all.

Mr. CARTWRIGHT. You see, sir, if I answer that, I believe that you might very well ask me about some of our subscribers and other people, and I wouldn't think of telling you the names of anybody in the South. Your friendly Governor might get after them.

The CHAIRMAN. Let us not be funny. I am not fortunate enough to be numbered among the Governor's friends, because I just met him this morning. So you are not making very much of an impression on anybody when you resort to that sort of things. You are not going to be asked about subscribers at all, and you know it.

You answer the question who is the editor of this paper. It is published in Chicago and mailed in Louisville.

(The witness conferred with his counsel.)

Mr. CARTWRIGHT. Mr. Walter, obviously the names, the two names, Perry Cartwright and Eugene Feldman, appear on this magazine together. That should be answer enough. If you can assure me that you won't pursue this into asking me the names and addresses of people in the South, where they will be subjected to the violence of the Klan and the Councils, then I will answer that particular question. But I got to draw the line at giving information to segregationists.

The CHAIRMAN. Mr. Arens, ask the next question.

Mr. ARENS. Are Carl and Anne Braden of Louisville connected with the Southern Newsletter? Could you help us on that, please, sir?

Mr. CARTWRIGHT. Mr. Arens, there is a good sample right there of liberal white people who believe in a more democratic approach to the race question, getting into terrible trouble, subsequently cleared by the Supreme Court, the same Court which, of course, slapped this committee down several times. I just simply am not going to talk about other people and get them in trouble in the South.

Mr. ARENS. Do you know whether or not Carl and Anne Braden are connected in an official capacity with the Southern Newsletter?

Mr. CARTWRIGHT. Mr. Arens, if you will ask me about myself, as you see, I am willing to testify freely, but I must repeat it is morally reprehensible to me.

Mr. ARENS. Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question.

The CHAIRMAN. You are directed to answer the question.

Mr. CARTWRIGHT. I am just not going to help in bringing any kind of police-state informing conditions in this country. It is against my principles entirely, sir. I will answer about myself. I have done that freely. Please don't put me in position to jeopardizing other people.

The CHAIRMAN. Why would you be jeopardizing anybody by admitting that you knew them? How would you be placing them in jeopardy?

Mr. CARTWRIGHT. Mr. Walter, I will answer that one. It is common knowledge that it was a great case in this country centered around the Bradens. I read about it, as well as anyone else interested in a more democratic, decent great South that your party says it is for in its platforms. The Bradens, as you probably know, were sentenced to jail 15 years on a drummed up sedition charge.

The CHAIRMAN. That is the case where they blew up their own property. Is that the case you are talking about?

Mr. CARTWRIGHT. You are making allegations.

The CHAIRMAN. I am merely asking. I don't know anything about it, either.

Mr. CARTWRIGHT. It is a have-you-stopped-beating-the-wife question. That allegation was never sustained. Someone blew up a house.

The CHAIRMAN. I asked you to identify a case. I don't remember.

Mr. CARTWRIGHT. Sir, my attorney here was represented in that case. He is a prominent Negro Republican attorney in Louisville and he helped represent the Bradens. Now, I would have no objection to my counsel answering that question. He is intimately familiar with the case.

The CHAIRMAN. He is not the witness at the moment.

Go ahead, Mr. ARENS.

Mr. ARENS. Where did you live immediately prior to your present residence?

Mr. CARTWRIGHT. 4746 1/2 South Woodlawn, Chicago.

Mr. ARENS. Where did you live immediately prior to your Chicago residence?

Mr. CARTWRIGHT. Flint, Michigan.

Mr. ARENS. How long did you live there?

Mr. CARTWRIGHT. Some 4 years, sir.

Mr. ARENS. How long have you lived in Chicago?

Mr. CARTWRIGHT. Three, three and a half years.

Mr. ARENS. What was your occupation in Flint, Michigan?

Mr. CARTWRIGHT. Oh, I drove a truck and, for a while, I was a machinist at one of the General Motors plants there.

Mr. ARENS. Give us a word, sir, about your education.

Mr. CARTWRIGHT. Well, I grew up in York, South Carolina, and I completed high school at the schools there, and I went one year to the University of South Carolina. Then I had a considerable number of courses of all types in both the Royal Canadian Air Force and in the United States Army, from which I was discharged as a captain in 1945.

Are you listening, Mr. ARENS? Do you want me to answer the thing?

Mr. ARENS. Go ahead. I am listening, yes, sir.

Mr. CARTWRIGHT. After that I went to New York University for a total of about 2 years. It was a little broken up.

Mr. ARENS. Have you been connected with any publications other than with the Newsletter?

Mr. CARTWRIGHT. Well, sir, as I mentioned, I was a Socialist. I was a non-Communist. You know you are supposed to be investigating communism. You know perfectly well I'm not a Communist. And I wrote at various times for certain Socialist publications.

Mr. ARENS. Have you ever written for the Southerner of Dalton, Georgia?

Mr. CARTWRIGHT. My name appears in it, and I wrote for it, yes, sir. I felt that it was an approach to a sane race-relations program in the South towards unionization, which I am strongly in favor of, and because of these convictions I wrote for it without any compensation of any kind.

Mr. ARENS: Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

The CHAIRMAN. Any questions?

Mr. WILLIS. No questions.

Mr. TUCK. No questions.

Mr. CARTWRIGHT. Am I released? Am I released, sir?

Mr. ARENS. The next witness, if you please, Mr. Chairman, will be Clara Saba.

Kindly come forward.

The CHAIRMAN. Will you raise your right hand, please?

Mr. FORER. Just a moment. We ask that no photographs be taken, Mr. Chairman.

The CHAIRMAN. Before the witness testifies there is no rule that—

Mr. FORER. I didn't hear you. I am sorry.

The CHAIRMAN. Before the witness testifies, you know the rule of this committee is to permit the press to take pictures.

Mr. JACKSON. It is known as freedom of the press.

Mr. FORER. I am glad to hear you solicit that.

The CHAIRMAN. You have been before this committee dozens of times so you know the rules better than anybody.

Please stand up and raise your right hand, Mrs. Saba.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mrs. SABA. I do.

The CHAIRMAN. Sit down, please.

TESTIMONY OF CLARA HUTCHERSON SABA, ACCOMPANIED BY COUNSEL, JOSEPH FORER

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mrs. SABA. I am Mrs. Mitchell Saba, from Roanoke, Virginia, and I am unemployed, thanks to this committee; after I got your subpoena, I was fired.

Mr. ARENS. You are appearing today in response to a subpoena that was served upon you by this committee?

Mrs. SABA. Yes, in response. It is not voluntary.

Mr. ARENS. And you are represented by counsel?

Mrs. SABA. Yes, I am.

Mr. ARENS. Counsel, will you kindly identify yourself?

Mr. FORER. Joseph Forer, Washington, D. C.

Mr. ARENS. Would you kindly tell us your maiden name, please, Mrs. Saba?

Mrs. SABA. Clara Hutchinson.

Mr. ARENS. H-u-t-c-h-i-n-s-o-n?

Mrs. SABA. No.

Mr. ARENS. Would you kindly spell your last name, your maiden name for us?

Mrs. SABA. H-u-t-c-h-e-r-s-o-n. From Pittsylvania County, in Virginia. I believe that is Representative Tuck, our former Governor's district, down there at Danville.

Mr. ARENS. Now, for purposes of identification, you are the wife of Mitchell Saba; is that correct?

Mrs. SABA. That is right.

Mr. ARENS. Where were you born?

Mrs. SABA. I was born on a tobacco farm in Pittsylvania County near Danville.

Mr. ARENS. And give us a word, please, about your education.

Mrs. SABA. I am a high-school graduate.

Mr. ARENS. When?

Mrs. SABA. 1934.

Mr. ARENS. Kindly tell us your first principal employment after you concluded your formal education.

Mrs. SABA. I was a textile worker.

Mr. ARENS. Where?

Mrs. SABA. American Viscose Company in Roanoke for 8 years.

Mr. ARENS. Over what period of time were you a textile worker?

Mrs. SABA. Well, if I recall rightly I worked for awhile during my high school years—for 6 months, I believe it was—and I went back and finished high school so I could graduate in the spring term with the rest of my class. And then I went back to the American Viscose Company where I worked for 8 years along with, I believe it was, 3 sisters and my father.

Mr. ARENS. Please tell us about what period of time in your life were you engaged in this textile establishment.

Mr. SABA. What do you mean?

Mr. ARENS. What years?

Mrs. SABA. I think it was 1934 to—my arithmetic might not be very good—I think it was 1942. Does that make 8 years?

Mr. ARENS. Approximately, yes.

Now, tell us what your first employment was after you concluded your employment at the textile establishment.

Mrs. SABA. I was technologically displaced. So I went from there as an organizer to North Carolina, in Winston-Salem.

Mr. ARENS. Excuse me. An organizer for what?

Mrs. SABA. For FTA, Food, Tobacco and Agriculture.

Mr. ARENS. Who was your immediate supervisor in FTA?

Mrs. SABA. My immediate superior?

Mr. ARENS. Yes, Ma'am.

(The witness conferred with her counsel.)

Mr. FORER. Give the question again, will you?

Mr. ARENS. Who was your immediate superior in FTA?

Mrs. SABA. It is not that I mind telling you but it is that every name that seems to come before this committee, that their names are published in the newspapers, just like mine was; and they get all sorts of smears against them, and I hesitate to do it for that reason.

Mr. ARENS. Was the person who was your immediate superior, to your knowledge, a member of the Communist Party?

Mrs. SABA. I know nothing about his membership in anything except that he was a director.

Mr. ARENS. Thank you. Tell us, where were you engaged by FTA as an organizer?

Mrs. SABA. In Winston-Salem.

Mr. ARENS. Over what period of time?

Mrs. SABA. Well, let's see. I believe it was 1943 to—it was a year and a half.

Mr. ARENS. Where were you organizing, in what plant or plants?

Mrs. SABA. Camel Cigarette factory.

Mr. ARENS. And your next employment?

Mrs. SABA. From there I went to New York.

Mr. ARENS. In what capacity did you go to New York, as an organizer for FTA?

Mrs. SABA. No, I got married.

Mr. ARENS. Did you live in New York?

Mrs. SABA. Yes, for a year and a half.

Mr. ARENS. Were you then employed?

Mrs. SABA. Yes, I was.

Mr. ARENS. Where were you employed?

Mrs. SABA. For the United States Army.

Mr. ARENS. In what capacity?

Mrs. SABA. Transportation zone.

Mr. ARENS. What were your duties?

Mrs. SABA. Clerk-stenographer.

Mr. ARENS. And then your next employment?

Mrs. SABA. Well, I believe it was from there we came back to Roanoke and—

Mr. ARENS. While you were in New York City, before you get back to Roanoke, did you attend any sessions at a place called Camp Beacon in New York?

(The witness conferred with her counsel.)

Mr. WILLIS. What was that question?

Mr. ARENS. The question was while she was in New York City, did she attend any sessions at a place called Camp Beacon, New York.

Mrs. SABA. I refuse to answer that question for the following reasons: No. 1, I feel that these questions invade my rights under the first amendment, free speech and free assembly; No. 2, I believe, from what I have heard and from what I have read of your committee, that it is not in the best interests of civil liberties of our country; and I believe that you are calling me here because of my strong position that I have taken for a great number of years on the question of integration in the South.

The CHAIRMAN. Just let me disabuse your mind on that point. That is simply not the truth. Whether you believe it or not, it is not the truth. This committee is not concerned with any extraneous problems such as that is. We are concerned solely with Communist activities and what to do about it in order to protect this Republic, and we are asking you to assist us in our work.

Mr. ARENS. Have you been in attendance at Camp Beacon in New York?

Mrs. SABA. I have not finished the answer.

Mr. ARENS. I beg your pardon.

Mrs. SABA. I would like to say further that your calling me here is—now what's the word?

The CHAIRMAN. Inconvenience?

Mrs. SABA. Well, it is an inconvenience, that's for sure.

The CHAIRMAN. It was an inconvenience for us to come here, too.

Mrs. SABA. I want to say this: that your calling me here would infer that I am un-American, that I am an advocate of force and violence, that I am for conspiracy and spying and that sort of thing; and I

want you to know that I resent that very much, and the people who know better know I have nothing to do—

Mr. ARENS. Now, tell the committee whether you have been a member of the Communist Party?

Mrs. SABA. I have not finished my answer. I refuse to answer.

Mr. FORER. That is all right. Just a minute.

I take it, Mr. Arens, you have accepted the objections to the last question and are now going on to another.

The CHAIRMAN. Just a minute. Have you answered the last question?

Mrs. SABA. I haven't finished.

The CHAIRMAN. Go ahead.

Mrs. SABA. I want to say I am basing my refusal on the first amendment and on the fifth amendment, which gives me the privilege of use so that I don't have to be a witness against myself.

Mr. ARENS. To your certain knowledge, is the Communist Party un-American?

(The witness conferred with her counsel.)

Mrs. SABA. Is this a question you are asking?

Mr. ARENS. Yes; you said you have not done anything un-American.

(The witness conferred with her counsel.)

Mrs. SABA. Define your terms, please.

Mr. ARENS. Now tell this committee, are you now, or have you ever been, a member of the Communist Party?

Mrs. SABA. I refuse to answer that question for the same reasons I just gave, first and fifth amendment.

Mr. ARENS. Are you now, at this moment, a member of the Communist Party?

Mrs. SABA. I refuse to answer that on the grounds of the first and fifth amendment.

Mr. ARENS. Were you a member of the Communist Party when you were sent by FTA as an organizer into North Carolina?

Mrs. SABA. I refuse to answer that on the grounds of the first and fifth amendment.

Mr. ARENS. Were you a member of the Communist Party when you were engaged in the service of the United States Army?

(The witness conferred with her counsel.)

Mrs. SABA. Pardon?

Mr. ARENS. Were you a member of the Communist Party when you were engaged in the service of the United States Army?

Mrs. SABA. I refuse to answer that for the reasons I gave before.

Mr. ARENS. Do you know, or have you known, a person by the name of Ralph Long?

Mrs. SABA. There is a Ralph Long that I know of and who has been convicted about 20 or 30 times of drunkenness and disorderly conduct in Chapel Hill, North Carolina. Is that the one that you want to know about?

Mr. ARENS. Do you know, or have you known, a man by the name of Ralph V. Long?

Mrs. SABA. I refuse to answer on the previous reasons given.

Mr. ARENS. Ralph V. Long took an oath before this committee and testified that while he was a member of the Communist Party, he

knew you as a Communist. I would like to give you an opportunity now to deny that statement by Mr. Long, which was made under oath; while you are under oath, do you care to avail yourself of that opportunity?

Mrs. SABA. I would like consultation, please.

(The witness conferred with her counsel.)

Mrs. SABA. I do not care to do so, but I want it to be known and make perfectly clear that Mr. Long has been convicted many times on drunkenness and disorderly conduct.

Mr. ARENS. Was Mr. Long in error or was he telling the truth when he said that he knew you as a Communist and served with you as a Communist at Camp Beacon?

(The witness conferred with her counsel.)

Mr. SABA. I refuse for the same reason.

Mr. JACKSON. Mr. Chairman, the witness has said that she knows a Mr. Long. Now, I am interested in finding out whether he was in a drunken and irresponsible condition when he identified you as a member of the Communist Party.

Were you in fact a member of the Communist Party as testified to under oath by Mr. Long?

Mrs. SABA. I refuse for the same reasons that I gave previously.

Mr. ARENS. Kindly tell us what your next employment was after you became disassociated from the United States Army.

Mrs. SABA. Will you repeat that question, please?

Mr. ARENS. From the employ of the United States Army.

Mrs. SABA. What was that question, please?

Mr. ARENS. You told us a few moments ago during one period of your life, 1943 or thereabouts, you were engaged in a clerical capacity with the United States Army in New York City. When did that service terminate?

Mrs. SABA. I believe it was '45. I am not quite sure about that.

Mr. ARENS. Kindly tell us your next employment.

Mrs. SABA. From there I went to Roanoke, and I didn't work in Roanoke. Then we moved to Florida.

Mr. ARENS. I didn't hear that.

Mrs. SABA. Went to Florida. In Miami, Florida, I worked for OPA.

Mr. ARENS. You went from the United States Army to Miami, Fla., and worked in OPA?

Mrs. SABA. Yes.

Mr. ARENS. What period of time did you work in OPA?

Mr. FORER. You left out Roanoke, but that is all right.

Mr. ARENS. You went to Roanoke from the United States Army for a short time and then to Miami, Florida.

Mrs. SABA. That is right.

Mr. ARENS. Were you engaged in employment in Roanoke prior to the time you went to Miami, Florida?

Mrs. SABA. No, not that I recall.

Mr. ARENS. How long were you engaged by the OPA in Miami, Florida?

Mrs. SABA. I believe it was about 6 or 8 months. I am not sure.

Mr. ARENS. In what capacity?

Mrs. SABA. Clerk-stenographer.

Mr. ARENS. Your next employment?

Mrs. SABA. From there we came back to Roanoke, and I believe my next job was with American Bridge Company, a subsidiary of United States Steel.

Mr. ARENS. In what capacity?

Mrs. SABA. In payroll.

Mr. ARENS. Were you a Communist at that time, a member of the Communist Party?

Mrs. SABA. I refuse to answer that on the basis that I have given earlier.

Mr. ARENS. Your next employment, please, Ma'am.

Mrs. SABA. The next was with a printing company—my experiences and work have been quite varied.

Mr. ARENS. In Roanoke?

Mrs. SABA. Yes.

Mr. ARENS. And in what capacity?

Mrs. SABA. I was a one-office girl, or one-girl office.

Mr. ARENS. And your next job, please?

Mrs. SABA. The next one was, I think it was, in Arizona; in Phoenix, Arizona. My husband had to go there for his health, and I worked there.

Mr. ARENS. Kindly tell us what year, please.

Mrs. SABA. I have lost track. Let me see. Gosh, I don't remember.

Mr. ARENS. Was it in the late '40's?

Mr. SABA. Can I help? I am Mitchell Saba. We went there in '55, if that will refresh her memory.

Mrs. SABA. '55?

Mr. SABA. Yes.

Mr. ARENS. Were you engaged in Phoenix, Arizona?

Mrs. SABA. Pardon?

Mr. ARENS. Were you engaged, did you have a job in Phoenix, Arizona?

Mrs. SABA. Yes.

Mr. ARENS. In what capacity?

Mrs. SABA. I was a stenographer for a construction company.

Mr. ARENS. How long did you stay in Phoenix?

Mrs. SABA. We got there in June and left in May.

Mr. ARENS. And your next location, please?

Mrs. SABA. Well, we came back to Roanoke—well, no. I got a couple other little jobs with construction companies, seasonal type of work, and I was laid off and I got a couple of short jobs while I was there, doing office work; and then we came to Roanoke.

Mr. ARENS. Have you been given special training at Camp Beacon in New York, under Communist Party direction and auspices, on Communist Party penetration techniques in the South?

Mrs. SABA. I refuse to answer that on the grounds that I have previously given.

Mr. ARENS. I put it to you as a fact, and ask you to affirm or deny the fact that you have been in attendance at Camp Beacon, New York.

Mr. FOREE. The witness did not complete her answer to the preceding question.

(The witness conferred with her counsel.)

Mrs. SABA. This question of penetrating the South, I want you to know that I was born in the South; and my ancestors, from as far back as I can remember, they were one of the first families of Virginia, and I don't know how I could penetrate the South.

Mr. ARENS. Yes. Now, just tell us whether or not you received training in the techniques of—not penetration of the South, I will amend my query—Communist penetrations of the South at Camp Beacon, New York.

Mrs. SABA. I refuse to answer that on the grounds that I have previously given.

Mr. ARENS. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

The CHAIRMAN. Are there any questions?

The witness is excused.

Mrs. SABA. Does Governor Tuck have any questions?

Mr. TUCK. I might ask you one or two.

The CHAIRMAN. What was that?

Mr. TUCK. She invited me to ask her one or two questions, and I thought I might comply.

Mrs. SABA. Go ahead.

Mr. FORER. She wants to know how things are in Danville.

Mr. TUCK. In what part of Pittsylvania County was that tobacco farm where you were born?

Mrs. SABA. Pardon?

Mr. TUCK. In what part of Pittsylvania County was that tobacco farm on which you were born and raised?

Mrs. SABA. It was near Axton. My father used to take his tobacco to market to Danville and South Boston, I believe.

Did you have a tobacco warehouse in South Boston?

Mr. TUCK. My father did.

Mrs. SABA. Then he probably took it to your father.

The CHAIRMAN. Probably related.

Mrs. SABA. Might be.

Mr. TUCK. What school did you say you graduated from in Pittsylvania County? What high school did you graduate from?

Mrs. SABA. My sisters went to Brownsville. I didn't. You are probably familiar with Brownsville.

Mr. TUCK. I understood you to say earlier in your testimony that you graduated—

Mrs. SABA. From Jefferson High School in Roanoke.

Mr. TUCK. In Roanoke?

Mrs. SABA. That's right.

Mr. TUCK. I thought you must have gone to some school outside of Pittsylvania County after hearing your testimony and I was wondering what other schools you attended.

Mrs. SABA. Jefferson, a wonderful guy.

Mr. TUCK. Did you get any other education after you left Jefferson School in Roanoke?

Mrs. SABA. What did you say?

Mr. TUCK. Did you go to any other school or colleges besides Jefferson School in Roanoke?

Mrs. SABA. That is the extent of my formal education.

Mr. TUCK. I wondered where you got so well educated on the Constitution.

Mrs. SABA. I can read.

Mr. FORER. It's in the paper, Governor.

Mrs. SABA. I believe that the committee could learn a great deal from the Constitution, if they would study it as well as I have, apparently. That is without contempt.

Mr. TUCK. Where in Roanoke did you work? You said you lost your job in Roanoke by reason of having been subpoenaed.

Mrs. SABA. I was a secretary, secretary-receptionist for two physicians.

Mr. TUCK. Two physicians?

Mrs. SABA. That is right.

Mr. TUCK. And they objected to your being summoned down here to testify and to give this committee such information as you may have upon the operations of the Communist organization?

Mrs. SABA. Well, we had quite a discussion, the doctors and I; and I told them that I felt that my appearance here, that I was fighting for the right of opinion and belief, and that this burden, which I consider a burden, it was not only just for me but it was for them, too; and they said that they didn't have any disagreement with me on that, they felt that I had a perfect right to my opinions and my beliefs, but they couldn't—

Mr. TUCK. Do you mean to convey—

Mrs. SABA. Pardon?

Mr. TUCK. Do you mean to convey to this committee and the House of Representatives and to the people here gathered that there are doctors in Roanoke, Va., who would object to your coming here before this committee of the Congress and giving them the benefit of such information as you may have in respect to the Communist organization in this country?

Mrs. SABA. I didn't say that they objected.

The CHAIRMAN. Of course you did. That is exactly what you said. You said you lost your job because you had been subpoenaed.

Mr. FORER. Why don't you let her finish what she was saying about what happened.

Mrs. SABA. I said I lost my job. That's right, because I was subpoenaed down here. They said that they—they couldn't keep me on with the kind of newspaper publicity that was coming out about me.

Mr. TUCK. Let me ask you this question—

Mrs. SABA. And would be coming out as a result of this hearing.

Mr. TUCK. Was there objection on their part to your giving information or was there objection on their part to your refusal to give information?

(Witness conferred with her counsel.)

Mrs. SABA. That is all I can say. They just objected to the publicity—that—you know—the spotlight would be on them and they said they would have to let me go rather than that happen.

Mr. TUCK. They didn't object to any publicity that might ensue by reason of your giving this committee any information which you had in respect to the Communist operation in the South, did they?

Mrs. SABA. I think you would have to ask them that. Yes, I do. I think you would.

Mr. TUCK. That they objected to that? They objected to your giving this committee information?

Mr. FORER. Mrs. Saba said she couldn't read their minds.

Mr. JACKSON. Let her answer. Counsel is well familiar with the rules of the committee.

Mrs. SABA. I didn't say that at all.

Mr. TUCK. I am interrogating the witness, not the counsel.

Mrs. SABA. I didn't say they objected to my coming down here. I am saying they objected to the kind of newspaper publicity that would come out of this trial, and they said they could not keep me on on that basis.

Mr. TUCK. Did you tell them that you were going to come down here and invoke the fifth amendment to the Constitution?

Mrs. SABA. I told them I was coming down here to protect the right of free speech and free opinion and that I felt that I was doing that for them, too, and I also told them that fascism in Germany—and the German people are smart people, they are not stupid—and yet fascism was able to take hold and grow over there. I say that the same thing could happen in this country unless people safeguard the right to bear their own opinions and their own thoughts, and that is exactly what I am trying and intending to do here today. If that sounds un-American, then I have to say I am un-American, but that is the way I feel about it.

Mr. TUCK. That is, in effect, you told these two physicians in Roanoke who employ you that you were going to come down here and refuse to give this committee such information as you may have in your possession that would guide and help this committee?

Mrs. SABA. Where do you get your information?

Mr. TUCK. I didn't. The only information that I have is from you. (The witness conferred with her counsel.)

Mrs. SABA. Yes, you are putting words in my mouth, Governor Tuck. I am sorry, I can't answer that.

Mr. TUCK. I am interrogating you on your own testimony.

Mrs. SABA. I haven't told you any such things.

Mr. JACKSON. Would the gentleman yield briefly?

Mr. TUCK. I will be glad to yield.

Mr. JACKSON. I would like to get this thing in proper context. How did the news of your subpoena come to the attention of the doctors by whom you were employed? Did you tell them?

(The witness conferred with her counsel.)

Mrs. SABA. That's a very interesting question.

Mr. JACKSON. That is why I asked it.

Mrs. SABA. I believe so. It makes me think that you have somehow or other—the committee must have gotten in touch with the doctors. Of course I did tell them.

Mr. JACKSON. I have no information, nor have I conferred with your former employers.

Mrs. SABA. In fact, I told the doctors the very day that I got a telephone call from the marshal. I went straight to the doctor and told him what kind of telephone call that I had gotten and I told him what to expect in the way of publicity.

Mr. JACKSON. All right.

Now, what did the doctor say to you? As a matter of fact, I think these doctors will finally wind up in a position to be highly commended, but I want to determine the reason, as you do, Governor Tuck, as to why any loyal American, be he doctor or any other

citizen, would object or would discharge an employee for doing his or her duty to the Government in the face of this tremendous conspiracy. Do you contend that these doctors by whom you were employed discharged you simply because you were subpoenaed? Was that the reason for the discharge?

(The witness conferred with her counsel.)

Mr. FORER. Would you mind repeating that question?

Mr. JACKSON. No. I want to know if the witness was discharged simply because she was subpoenaed.

Mr. FORER. The witness, Mr. Jackson—

Mrs. SABA. You want me to tell you what was said?

Mr. JACKSON. No.

Mrs. SABA. I will—

Mr. JACKSON. Very well.

Mrs. SABA. I am trying not to. If you insist, I will.

Mr. JACKSON. As briefly as possible.

(The witness conferred with her counsel.)

Mrs. SABA. You are asking for this.

Mr. JACKSON. Of course. That is why I asked.

(The witness conferred with her counsel.)

Mrs. SABA. I don't see how it is relevant and all and I would rather not say this. I would rather not say this because it is going to get back to the doctors. But I will tell you if you insist on it.

Mr. JACKSON. Mr. Chairman, the purpose of counsel is not to put words into the mouth of the witness.

The CHAIRMAN. Yes, of course.

Mr. JACKSON. It is audible from here.

Mrs. SABA. I am asking legal advice.

Mr. JACKSON. You are not asking; you are getting solicited guidance.

Mrs. SABA. I am asking for legal advice. Isn't that permissible?

Mr. JACKSON. Go on with the advice you have received.

Now, what happened when you went to the doctors?

(The witness conferred with her counsel.)

Mr. JACKSON. I am asking the witness. What happened when you went to the doctors and informed them that you had received the subpoena? This is within your knowledge, and I want the answer from you.

Mrs. SABA. I must consult with my attorney.

Mr. JACKSON. Was your attorney there when you told the doctors you had received a subpoena?

Mrs. SABA. Who is the chairman? Mr. Walter, who is responsible?

Mr. JACKSON. I have the floor. I am asking a question.

Mrs. SABA. Point of order, if that is correct.

Mr. JACKSON. No, I am sorry. This is not subject to a point of order. I am asking a question.

Mrs. SABA. Can I have some access to the chairman?

Mr. JACKSON. If the chairman tells me to cease, yes, but until—

Mrs. SABA. May I consult with my attorney?

The CHAIRMAN. In a moment—

Mrs. SABA. May I consult with my attorney before answering that question?

Mr. JACKSON. Mr. Chairman, I withdraw the question if this is so involved that the witness does not know what occurred when she went to the doctors. I will not pursue it.

Mr. FORER. Point of privilege.

The CHAIRMAN. Have you ever been to Beacon, N. Y.?

(The witness conferred with her counsel.)

Mrs. SABA. When we lived in New York.

Is this thing right?

The CHAIRMAN. It is on. We can hear you.

Mrs. SABA. Yes. We have been to Beacon. We traveled to Beacon. We traveled to all the outlying areas of New York City; yes.

The CHAIRMAN. You have been to Beacon?

Mrs. SABA. Yes.

The CHAIRMAN. Have you been to schools that were conducted at Beacon, New York?

Mrs. SABA. I refused to answer that on the previous grounds that I have given you earlier in my testimony.

The CHAIRMAN. Did you attend a Communist school in Beacon, New York?

Mrs. SABA. I refuse to answer that on the grounds of the previous testimony.

The CHAIRMAN. The fact of the matter is, the only school you went to at Beacon, New York, was a school that was established for the purpose of training people to go into other areas of the United States to instruct in Communist procedures, practices, and methods; isn't that a fact?

(At this point Representative Jackson left the hearing room.)

Mrs. SABA. I refuse to answer that on the basis that I have given you previously.

The CHAIRMAN. All right. Call your next witness.

Witness excused.

Mr. ARENS. The next witness, if you please, Mr. Chairman, is Mitchell Saba.

Kindly come forward.

The CHAIRMAN. Raise your right hand.

Mr. SABA. Mr. Chairman, this is necessary?

The CHAIRMAN. It is part of our system of government. It is part of freedom of the press. We are very much concerned in preserving it.

Mr. SABA. Yes, sir.

The CHAIRMAN. Raise your right hand.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. SABA. I do.

TESTIMONY OF MITCHELL SABA, ACCOMPANIED BY COUNSEL. JOSEPH FORER

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. SABA. My name is Mitchell Saba, and my home is 4125 Kentucky Avenue, N. W., in Roanoke, Virginia.

Mr. ARENS. You are appearing here today, Mr. Saba, in response to a subpoena which was served upon you by this committee?

Mr. SABA. That is correct.

Mr. ARENS. And you are represented by counsel?

Mr. SABA. Yes.

Mr. ARENS. Counsel, please identify yourself on this record.

Mr. FORER. Joseph Forer, and I am still from Washington, D. C.

Mr. ARENS. Where and when were you born, Mr. Saba?

Mr. SABA. I was born in Brooklyn, New York, on July 18, 1910.

Mr. ARENS. Mr. Saba, would it be convenient for you to keep your voice up a little, please, sir.

Mr. SABA. Oh.

Mr. ARENS. Give us, please, a word about your education.

Mr. SABA. I had 8 years of grammar school and 1 term—back in those days 1 term was half a year of high school, which I got by going to school at night after work.

Mr. ARENS. Did that complete your formal education?

Mr. SABA. Yes, it did.

Mr. ARENS. What year was that, please, sir?

Mr. SABA. Well, I don't recall the year I completed the half year in high school. It was sometime in the middle 20's.

Mr. ARENS. Now, kindly tell us the first principal employment you had after you completed your formal education.

Mr. SABA. I worked as an errand boy in a garment factory. I carried around the salesman's suitcase with samples which he took to these bars, and models wore them, and so on and so forth.

Mr. ARENS. How long did that employment endure?

Mr. SABA. I worked in this garment factory for 3 years. At the end of 3 years I was a full-fledged cutter, c-u-t-t-e-r. I was 18 years old at that time.

Mr. ARENS. And your next employment?

Mr. SABA. That was with a similar company for—no. My next employment after that was for approximately 5 or 6 months in a men's clothing store as a wrapper.

Mr. ARENS. Your next employment, please, sir.

Mr. SABA. In the ladies' garment industry for a while, and at that time my health had deteriorated and at that time I was 19. Things were such—my father didn't have much money. He had a brother in Egypt and he sent me there—in late 1929; for my bronchial condition.

Mr. ARENS. To Egypt?

Mr. SABA. Cairo, Egypt.

Mr. ARENS. How long did you stay in Egypt?

Mr. SABA. Two and a half years. Apparently the climate was not too good for me. I did work as a salesman—this was during the depression, early thirties—for an American company, selling office equipment in Egypt.

Mr. ARENS. On your return to the United States, what was your principal employment?

Mr. SABA. I didn't return to the United States from Egypt. I had to do something about my health, for my health deteriorated in Egypt, too, and I went to Lebanon, to the Lebanon mountains; and the three and a half years there improved my health very much.

Mr. ARENS. In what capacity were you engaged in Lebanon while you were there?

Mr. SABA. As a patient.

Mr. ARENS. Then your next employment?

Mr. SABA. I came back to the United States in 1936, and soon after that, having worked in the—rather, being in the hospital for such a while, I thought that I would like to work in a hospital and I did work for the City of New York for 6 years as an attendant for the Department of Hospitals.

Mr. ARENS. All right, sir. Your next employment.

Mr. SABA. I sought to improve myself and I worked for the Veterans' Administration, also as an attendant in a Veterans Administration hospital in New York for 2 years.

Mr. ARENS. That gets us up to about '44 or '45, does it not?

Mr. SABA. A little earlier than that, was when I—I think probably—

Mr. ARENS. All right, sir. Your next principal employment, please, sir.

Mr. SABA. I met a fellow who agreed to take me in when he opened up his shop and teach me refrigeration, which I did.

Mr. ARENS. That was in New York City?

Mr. SABA. In New York City.

Mr. ARENS. How long did that arrangement endure?

Mr. SABA. It might have lasted—this is all approximate—

Mr. ARENS. I understand.

Mr. SABA. About a year. And then while working on that job, a buddy and myself opened up our own roll shop; and about that time I met my wife, when she came to New York with her girl friend on her vacation.

Mr. ARENS. That was about '44 or '45, thereabouts?

Mr. SABA. About the end of '44. We got married—rather late in '44 and we got married, yes, in '45. I lived in New York for a year and a half.

Mr. ARENS. During your residency in New York City, did you ever attend Camp Beacon in New York?

(The witness conferred with his counsel.)

Mr. SABA. No, I didn't.

(At this point Representative Jackson returned to the hearing room.)

Mr. ARENS. Tell us now, if you please, sir, your next principal employment.

Mr. SABA. I worked in two refrigeration factories in New York, and shops, for about a year and a half, until the middle of '46; and things got slow, so I tried Roanoke.

Mr. ARENS. You tried what?

Mr. SABA. Roanoke. I had visited my wife's home town before and I liked Roanoke, and I felt I would like to work there and I found a job in Roanoke.

Mr. ARENS. Where?

Mr. SABA. With Johnston-Vest Electric Company. I think they treated me very good. Things got very slow, but I didn't expect them to keep me on forever. So that is why we went down to Florida where she had a sister and brother, and I worked down in Florida for about 7 or 8 months. At that time my wife was working.

Mr. ARENS. Where did you work in Florida, please, sir?

Mr. SABA. Around the Miami area.

Mr. ARENS. In what capacity did you work?

Mr. SABA. As refrigerator and air conditioning mechanic.

Mr. ARENS. And you returned to Roanoke?

Mr. SABA. Yes, I did, and I worked—if you want me to continue.

Mr. ARENS. If you please, sir.

Mr. SABA. In Roanoke I worked for the Richardson Company when I came back, in the capacity of refrigerator and air conditioning mechanic for 2 years, and then I joined a pipefitters union.

Mr. ARENS. What was the name of the organization, please, sir?

Mr. SABA. The AFL-CIO; and from there on until last March, I worked out of their jurisdiction. I have been unemployed since March '58.

I want to correct myself on that. I went to Arizona for my health.

Mr. ARENS. Have you ever applied for employment at Radford Arsenal in Radford, Virginia?

Mr. SABA. No, sir. I was afraid of a frame-up.

Mr. ARENS. I beg your pardon?

Mr. SABA. I was afraid of a frame-up.

Mr. ARENS. What do you mean, a frame-up?

Mr. SABA. At that time I noticed in the papers there was a lot of hysteria regarding spies and so on and so forth, so I shied away from any kind of contact with anything that would be of any security risk, and the possibility that some guy who wants a feather in his cap—I am not accusing the Government of anything like that—but I was afraid that some guy, some flunky, might with a feather in his cap, want to put a feather in his cap, would try to frame me and accuse me of spying. So I steered clear, stayed clear of the Radford Arsenal or anything else like that, although it meant unemployment to me.

Mr. ARENS. Are you now, or have you ever been, a member of the Communist Party?

Mr. SABA. I refuse to answer that question for the following reasons: I believe that the conduct of this committee has been contrary to the letter and spirit of the first amendment, which guarantees or is supposed to protect us in our rights regarding freedom of speech and assembly, press, so on and so forth.

The CHAIRMAN. Do you include in that, membership in the Communist Party? Do you think the Constitution of the United States guarantees people the right to join the Communist Party?

Mr. SABA. And I would like to finish the reason why I—

The CHAIRMAN. All right.

Mr. SABA. Refuse to answer this question.

And the Constitution of the Communist Party—I mean of the United States is supposed to guarantee us all freedom; and inasmuch as this committee is coming down here and concentrating on people who are for integration, I feel I should refuse to answer your question on the grounds that it would incriminate me.

Mr. JACKSON. Mr. Chairman, I want the record clear. I happen to have voted for a great deal of civil rights legislation.

The committee is not here to investigate how you feel on integration. The committee is here to investigate testimony, taken under oath, which identifies certain people as having been members of the Communist conspiracy. Let's separate this integration matter and the Communist membership.

The reason you didn't pursue employment with the Federal Government was because of the fact that there had been such testimony relating to your past as would make it impossible for you to be employed with the Federal Government. Isn't this a fact?

Mr. SABA. What is a fact?

Mr. JACKSON. Isn't it a fact that the reason you didn't pursue the Radford Arsenal application was because there were things in your past that would have guaranteed that you couldn't have gotten a job? (The witness conferred with his counsel.)

Mr. SABA. I thought I gave you my reason awhile ago, the reason why I didn't go to the Radford Arsenal and did not apply in any other so-called sensitive job.

The CHAIRMAN. May I ask a question in that connection?

Why didn't you feel that you could qualify for a sensitive job and so forth?

Mr. SABA. The FBI had been snooping around me.

The CHAIRMAN. Oh, and what did they find out? I mean what do you think they found out?

(The witness conferred with his counsel.)

Mr. SABA. Now, how are these questions that you are asking me and expect me to answer them, going to help you frame legislation, Mr. Walter? I don't understand.

The CHAIRMAN. I think we have some ideas, now, and you are developing them very nicely for us.

Mr. SABA. Mr. Walter, I feel very strongly that the oil fields of the United States should be nationalized; and if Rockefeller wants to put me against the wall and shoot me for that, well, I am ready to take the risk. That is why I think—

The CHAIRMAN. There is only one place in the world where that could happen to you and that is behind the Iron Curtain. Go on, Mr. Arens, with the next question.

Mr. ARENS. I have no further questions of this witness.

The CHAIRMAN. Do you have any questions, Governor?

Mr. TUCK. No.

The CHAIRMAN. The witness is excused. We will take a 5-minute recess.

(Members present: Representatives Walter, Willis, Tuck, and Jackson.)

(Brief recess.)

(Members present: Representatives Walter, Willis, Tuck, and Jackson.)

Mr. ARENS. Don West, kindly come forward.

The CHAIRMAN. Mr. West, your attorney, Joe Forer, has given us certain information and as a result of it you will be continued under the subpoena although I am not so certain we will get any answers from you anyway.

Mr. WEST. Does that mean that I am excused at this point?

The CHAIRMAN. You are excused at this point.

Mr. WEST. I will be notified later?

The CHAIRMAN. That is right.

Will you call the next witness, Mr. Arens?

Mr. ARENS. Jack Hester, kindly come forward.

The CHAIRMAN. Will you raise your right hand, Mr. Hester?

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HESTER. I do.

**TESTIMONY OF JOHN E. HESTER, JR., ACCOMPANIED BY COUNSEL,
C. EWBANK TUCKER**

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. HESTER. My name is John E. Hester, Jr. I live at 850 East 57th Street, Chicago, Illinois. And I would say my occupation is student at this time.

Mr. ARENS. You are appearing today, Mr. Hester, in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. HESTER. That is right, sir.

Mr. ARENS. And you are represented by counsel?

Mr. HESTER. Yes, sir.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. TUCKER. Bishop C. Ewbank Tucker, member of the Kentucky State Bar.

Mr. ARENS. Mr. Hester, are you now, or have you ever been, a member of the Communist Party?

Mr. HESTER. Mr. Arens, at this point I would like to say this: I will answer all questions that I feel do not touch on political beliefs or past associations. On these questions I will refuse to answer, first, because I feel they are an infringement on a person's right to their own beliefs and right to hold opinions of their own choice, and I also would invoke the first and fifth amendments on any such questions.

Mr. ARENS. Would it be convenient for you to raise your voice a little, Mr. Hester?

Mr. HESTER. Surely—and I do so invoke the first and fifth amendments to this question.

Mr. ARENS. Where and when were you born?

Mr. HESTER. April 24, 1932, in Los Angeles County, California.

Mr. ARENS. And give us a word, please, about your education.

Mr. HESTER. I had 8 years of elementary school. The bulk of it was in Kansas City, Kansas. I had 4 years of high school in Omaha, Nebraska. And I have recently started college work in Chicago at one of Chicago's junior colleges.

Mr. ARENS. Have you ever been gainfully employed?

Mr. HESTER. Yes, sir.

Mr. ARENS. Where and when, please, sir?

Mr. HESTER. Where should I start? At the very beginning?

Mr. ARENS. With the principal occupation, not incidental occupations as a youngster.

Mr. HESTER. After getting out of high school, I worked for a brief time in Chicago, Illinois, at a truck transfer point. I worked in New York City subsequent to that, in 2 or 3 jobs. I guess the first was in a clothing distributive house, Lerner's, and following that in a small factory of people that made baking pans for bakeries. In 1952 I returned to Chicago. I got a job at Armour and Company, a packing-house. I worked there until I was drafted in the latter part of 1952,

and I worked there subsequent to my discharge. They had a considerable lay-off in '56, I believe—the latter part of '56—and whereupon I took up the trade of machinist and worked for oh, approximately a year as a machine tool operator. And following that I was self-employed here in the South.

Mr. ARENS. What was the nature of your self-employment in the South?

Mr. HESTER. I worked on a farm and I peddled vegetables in Atlanta, Georgia, up until September of last year.

Mr. ARENS. Do you know a man by the name of Don West?

Mr. HESTER. As I indicated previously, I would not answer questions that involved associations or political beliefs for the reasons I gave.

Mr. ARENS. Have you ever lived at Don West's house here in Georgia?

Mr. HESTER. I refuse to answer for the same reasons.

The CHAIRMAN. Where did you live in Georgia?

Mr. HESTER. I lived on a farm near Douglasville, Georgia, sir.

The CHAIRMAN. Is that the only place you ever lived in Georgia?

Mr. HESTER. Yes, sir.

Mr. ARENS. I should like to display to you a photograph and ask you if that is a true and correct reproduction of the house that you lived in, in Georgia.

(The witness conferred with his counsel.)

Mr. HESTER. I refuse to answer that for the reasons given previously.

Mr. ARENS. I put it to you as a fact, sir, and ask you to affirm or deny the fact, that this is the reproduction of the house of Don West, in which you were living during 1956. If that is not true, please deny it while you are under oath.

Mr. HESTER. I refuse to answer under the same reasons that I gave. (Document marked "Hester Exhibit No. 1," and retained in committee files.)

Mr. WILLIS. Is Don West a farmer?

Mr. HESTER. Are you asking me, sir?

Mr. ARENS. Could you answer the question, please?

Mr. HESTER. I don't know, sir.

I beg your pardon.

(The witness conferred with his counsel.)

Mr. WILLIS. You talked about peddling vegetables and being a farm boy. Now I just want to know, is Don West a farmer?

Mr. HESTER. Mr. Arens, could my last statement be struck from the record?

Mr. ARENS. You may qualify it: yes, sir.

Mr. HESTER. I would like to strike it.

The CHAIRMAN. Just a moment. What do you want stricken from the record?

Mr. HESTER. The words "I don't know."

The CHAIRMAN. Why do you want those stricken from the record? Do you know?

Mr. HESTER. Because this has to do with associations, as I indicated earlier.

The CHAIRMAN. You already answered the question. You were asked the question of what his employment was and you said "I don't know."

Mr. HESTER. Precisely, sir, and that is why I want it stricken from the record.

The CHAIRMAN. We are not going to strike it from the record. That is your answer.

Mr. ARENS. Do you know Don West's employment?

Mr. HESTER. Sir, I refuse to answer under the first and fifth amendments.

Mr. ARENS. What activity were you engaged in during 1956 and 1957 in the Greater Atlanta, Georgia, area?

Mr. HESTER. I raised some vegetables and also bought some of the Farmers Market in Atlanta and sold them as other peddlers do in Atlanta.

Mr. ARENS. Did you engage in Communist Party activities during your tenure here, 1956 and '57?

Mr. HESTER. As I indicated previously I would not answer questions that had to do with beliefs or associations.

Mr. ARENS. Let's not talk about beliefs or associations. Let's talk about activities. Did you engage in Communist Party activities here in the Greater Atlanta, Georgia, area in 1956 or 1957?

Mr. HESTER. I refuse to answer for the same reasons.

Mr. ARENS. What course are you taking at the school you are attending in Chicago?

Mr. HESTER. I just started, but I have taken these two, college mathematics and beginning English.

Mr. ARENS. Have you ever been to Dalton, Georgia?

Mr. HESTER. Yes, sir.

Mr. ARENS. Was your visit at Dalton, Georgia, in company with Don West?

Mr. HESTER. Sir, I didn't say it was a visit. I say I have been there. I passed through it.

The CHAIRMAN. When you passed through, was Don West with you?

Mr. HESTER. Sir, I invoke the fifth amendment at this point.

Mr. ARENS. Have you been a member of the Labor Youth League?

Mr. HESTER. I refuse to answer for the reasons I gave previously.

Mr. ARENS. Are you now, this minute, a member of the Communist Party?

Mr. HESTER. I refuse to answer for the same reasons.

The CHAIRMAN. You are excused. The committee will be in recess until 10 tomorrow morning.

(Whereupon, at 4 p. m., Tuesday, July 29, 1958, the subcommittee recessed to reconvene at 10 a. m., Wednesday, July 30, 1958.)

COMMUNIST INFILTRATION AND ACTIVITIES IN THE SOUTH

WEDNESDAY, JULY 30, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Atlanta, Ga.
PUBLIC HEARING

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10 a. m. in the Courtroom, Old Post Office Building, Atlanta, Ga., Honorable Edwin E. Willis (chairman of the subcommittee) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; and Donald L. Jackson, of California.

Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

Mr. WILLIS. The subcommittee will please come to order. Counsel, will you call our first witness?

Mr. ARENS. Mr. Carl Braden, kindly come forward.

Mr. BRADEN. I have two counsel, Mr. Chairman.

Mr. WILLIS. All right. Please raise your right hand. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRADEN. I do.

TESTIMONY OF CARL BRADEN, ACCOMPANIED BY COUNSEL, C. EWBANK TUCKER AND JOHN M. COE

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. BRADEN. My name is Carl Braden. I live at 4403 Virginia Avenue, in Louisville, Kentucky. I am a worker in the integration movement in the South, having been employed by the Southern Conference Educational Fund, Inc., which is southwide interracial organization working to bring about integration, justice, and decency in the South.

Mr. ARENS. Mr. Braden, you are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. BRADEN. I am. I was vacationing in Rhode Island when a United States marshal took me off the beach and handed me a subpoena.

Mr. ARENS. And you are represented by counsel?

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Mr. BRADEN. I am.

Mr. ARENS. Counsel, will you kindly identify yourselves?

Mr. TUCKER. C. Ewbank Tucker of Louisville, Kentucky; Louisville, Kentucky, member of the Kentucky State Bar.

Mr. COE. John M. Coe of Pensacola, Florida, member of the Bar of Florida and the Supreme Court of the United States.

Mr. ARENS. In what capacity are you employed, Mr. Braden, with the Southern Conference Educational Fund?

Mr. BRADEN. I am employed as field secretary, and I am also associate editor of their newspaper, the Southern Patriot, which is a paper that disseminates information on integration in the South and about the people who are working for integration.

Mr. ARENS. How long have you been so employed, please, sir?

Mr. BRADEN. A year.

Mr. ARENS. And what was your employment immediately prior to your present employment?

Mr. BRADEN. I was employed—I was unemployed as a result of harassment and prosecution resulting from my efforts to bring about integration in Louisville, Kentucky.

Mr. ARENS. And what was your last principal occupation?

Mr. BRADEN. I was a newspaper man, employed as a copy editor by the Louisville Courier-Journal.

Mr. ARENS. How long did that employment endure?

Mr. BRADEN. I was employed on two different occasions. You mean my entire newspaper career or—

Mr. ARENS. Just the highlights, please, sir.

Mr. BRADEN. All right. I was a reporter and rewrite man for the Louisville Herald-Post from 1930 to 1936; a reporter and editor for the Cincinnati Inquirer; city editor of the Harlan, Kentucky, Daily Enterprise; labor reporter for the Louisville Times; and then editor for the Courier-Journal, in addition to being editor of several labor newspapers.

Mr. ARENS. Would you give us now please just a word about your education?

Mr. BRADEN. I studied from 1928 to 1930 for the Catholic priesthood. I might add that I am now a member of the Episcopal Church.

Mr. ARENS. When did you complete your formal education?

Mr. BRADEN. I did not attend school after 1930.

Mr. ARENS. Mr. Braden, I understand you to say you were vacationing in Rhode Island when you were served with the subpoena to appear before this committee, is that correct?

Mr. BRADEN. That is right, sir.

Mr. ARENS. With whom were you visiting in Rhode Island?

Mr. BRADEN. I was visiting Harvey O'Connor.

Mr. ARENS. Can you tell us, if you please, sir, what his occupation is?

Mr. BRADEN. Harvey O'Connor is a writer.

Mr. ARENS. Is he connected with the Emergency Civil Liberties Committee?

Mr. BRADEN. He is the chairman of it, the national chairman.

Mr. ARENS. And where did you come from to your point in Rhode Island; where was your immediate point of departure before you arrived in Rhode Island?

Mr. BRADEN. Mr. Arens, I believe this is outside the scope of any possible—this is not pertinent to any possible investigation that this committee might be conducting, and I also believe that it is an invasion of my right to associate under the first amendment, and I therefore decline to answer.

Mr. ARENS. Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer; and I should like, for the purpose of making the record absolutely clear, to explain to the witness now the pertinency of the question.

Sir, it is our understanding that you are now a Communist, a member of the Communist Party; that you have been identified by reputable, responsible witnesses under oath as a Communist, part of the Communist Party which is a tentacle of the international Communist conspiracy. It is our information further, sir, that you as a Communist have been propagating the Communist activity and the Communist line principally in the South; that you have been masquerading behind a facade of humanitarianism; that you have been masquerading behind a facade of emotional appeal to certain segments of our society; that your purpose, objective, your activities, are designed to further the cause of the international Communist conspiracy in the United States.

Now, there is pending before the Committee on Un-American Activities pursuant to its authority, its duty, and its responsibility legislation. Indeed, the chairman of the Committee on Un-American Activities sometime ago introduced a bill, H. R. 9337, which has numerous provisions which are being considered by the Committee on Un-American Activities. Some of these provisions undertake to tighten the security laws respecting registration of Communists; some of these provisions undertake to tighten the security laws respecting the dissemination of Communist propaganda. Some of these security laws preclude certain types of activities, the very nature of which we understand you have been engaged in.

In addition to that, sir, there is pending before the Committee on Un-American Activities a series of proposals that are not yet incorporated into legislative form, which the committee is considering. In addition to that, the Committee on Un-American Activities has a mandate from the Congress of the United States to maintain a surveillance over the administration and operation of numerous security laws that are presently on the statute books, including the Internal Security Act, the Communist Control Act of 1954, the Foreign Agents Registration Act, espionage and sabotage statutes.

It is for that reason and for these reasons which I have just described to you that this committee has come to Atlanta, Georgia, for the purpose of assembling factual material which the committee can use, in connection with other material which it has assembled, in appraising the administration and operation of the laws and in making a studied judgment upon whether or not the current provisions of the laws are adequate and whether or not each or any of these proposals pending before the committee should be recommended for enactment.

If you, sir, now will tell us, in response to the last outstanding principal question, where you have been immediately prior to your sojourn in Rhode Island with Harvey O'Connor, who has been iden-

tified as a hard-core member of the Communist conspiracy, head of the Emergency Civil Liberties Committee, and other organizations that have been cited by a congressional committee as Communist fronts.

If you will tell us, sir, now of your activities in this connection, that will add to the fund of knowledge of this committee so that it can more adequately discharge the duties and responsibilities which it has upon it.

Now, Mr. Chairman, on the basis of that explanation of the pertinency of the question which I have posed to this witness, I respectfully suggest that you now order and direct this witness either to answer the question or to invoke his privileges under the fifth amendment against giving testimony which could be used against him in a criminal proceeding.

Mr. WILLIS. I think, sir, that a sufficient foundation has been laid to make the question completely pertinent, and I direct you to answer the question.

Mr. BRADEN. In the first place, Mr. Chairman, Mr. Arens has been grossly misinformed; and it still remains a fact that my beliefs and my associations are none of the business of this committee.

Mr. WILLIS. In other words, you are maintaining your attitude of refusing to answer?

Mr. BRADEN. On the grounds of the first amendment to the United States Constitution, which protects the right of all citizens to practice beliefs and associations, freedom of the press, freedom of religion, and freedom of assembly. On that ground I stand, sir.

While you are investigating, Mr. Arens, you ought to investigate some of the atrocities against the Jews and Negroes in the South, such as the picketing of the Atlanta Journal last Sunday morning.

Mr. ARENS. Now, kindly tell the committee, if you please, sir, are you now, this minute, a member of the Communist Party?

Mr. BRADEN. I stand on my previous position under the first amendment, that such a question has no pertinency to any legislative purpose and it violates my belief.

Mr. WILLIS. Would you kindly defer one second?

Proceed with your next question, Mr. Counsel.

Mr. ARENS. Excuse me just a moment. Mr. Chairman, may we have the reporter read back just the last line or so, so I am thoroughly conversant?

Mr. WILLIS. What was the outstanding question? The outstanding question was: Are you now a member of the Communist Party? If I am not mistaken, the witness refused to answer the question, but did not invoke the privileges against self-incrimination provided in the fifth amendment to the Constitution of the United States. That is correct, is it not?

Mr. BRADEN. And I stated my grounds on the first amendment, on the grounds that the question has no possible pertinency to any legislation.

Mr. ARENS. Yes. I want the record to be absolutely clear, sir, so we do not put this committee in the ludicrous position of a complete, thorough explanation in response to each invocation of alleged lack of pertinency, that the explanation which I gave to you as to the pertinency of the question is understood to be applicable to similar questions which I am intending to propose to you.

Mr. BRADEN. Should I take that up with counsel, or what?

Mr. ARENS. I am just announcing for the record now.

Mr. BRADEN. You are doing this—

Mr. ARENS. If, as, and when this particular proceeding is subject to judicial review, it will be thoroughly understood that the questions which I propose to propound to you today will be geared to the pertinency which I summarily explained to you a few moments ago.

Mr. BRADEN. Is this pertinent insofar as the integration movement is concerned?

Mr. ARENS. Sir, kindly tell us—

Mr. WILLIS. Let the Chair understand the situation. And I think that should be made perfectly clear. I think the question of pertinency of these hearings has been completely explained and is a matter of record. Without repetition, you are now on your guard as to why these questions are being propounded to you, all of them; and let that basis be the general basis for the question.

Now do I understand that you have refused to answer the question as to whether or not you are now a member of the Communist Party solely upon the invocation of the provisions of the first amendment, but that you have not invoked the protection of the fifth amendment to the Constitution. Is that correct?

Mr. BRADEN. That is right, sir. I am standing on the Watkins, Sweezy, Koenigsberg, and other decisions of the United States Supreme Court which protect my right, and the Constitution as they interpret the Constitution of the United States, protecting my right to private belief and association.

Mr. ARENS. And let it be clear also, sir, that I do not propose, nor have I thus far at any time undertaken, to probe any private beliefs. We are interested here solely in your participation in an organization which is controlled by a Godless, atheistic conspiracy, which is sweeping the world and which ultimately threatens, and will threaten, the integrity of this Nation; and if this committee of the United States Congress cannot solicit from a citizen information respecting the operation within the confines of the border of this Godless, atheistic conspiracy, God help this country.

Mr. BRADEN. Are you saying integration is communism like they do in Louisiana?

Mr. ARENS. Now would you kindly tell us whether or not Mrs. Alberta Ahearn, A-h-e-a-r-n, was in error when she took an oath before the Committee on Un-American Activities and testified that while she was a member of the Communist Party she knew you, sir, as a member of the Communist Party? We would like to now afford you an opportunity to deny that identification while you are under oath, sir. Do you care to avail yourself of that opportunity?

Mr. BRADEN. I stand on the same grounds as I stood on before. You are probing into private beliefs and associations, which are protected by the first amendment of the United States. The question has no possible pertinency to any legislative purpose. The mandate of this committee is so vague that nobody knows what you are supposed to be investigating.

Mr. ARENS. We will tell you now, communism and Communists—

Mr. BRADEN. Integration is what you are investigating. All the people subpoenaed here are integrationists.

Mr. JACKSON. Are all of the people subpoenaed here also Communists?

Mr. BRADEN. I leave that to you.

Mr. JACKSON. We are trying to determine that fact; and it would certainly seem that when we have testimony under oath which so identifies witnesses, that there must be some flame with all of the smoke.

Mr. BRADEN. Have any of your witnesses identified the anti-Semite who was picketing the Journal Building Sunday morning, Billy Branam?

Mr. JACKSON. Do you suggest that this committee of the Congress should take over the police powers? Do you suggest if somebody was shot on the street corner in Atlanta—

Mr. BRADEN. That is what you are doing, Mr. Jackson.

Mr. JACKSON. Just a moment—that this committee of Congress, which has no such mandate, should go out and make investigation of that particular form of violence? This is an investigation that is bounded by certain very clear-cut and distinct lines, your definition to the contrary. We are told to investigate the extent and scope of propaganda activities within the United States. That is precisely what we are doing. And when you cast doubt, or attempt to cast doubt, on the relevancy of the question when you are in the position you are to influence public opinion through your writings—and I gather through your writings on behalf of the Communist Party—it is very clearly within the purview of this committee to inquire into those activities. I do not care what you think. I have not the slightest interest in—

Mr. BRADEN. Mr. Arens just asked me—

Mr. JACKSON. Slightest interest in your opinions. I am sure that your opinions would be extremely interesting, but I am not interested in them.

What I am interested in, is what are you doing on behalf of the Communist Party? We are not going to be clouded, so far as I am concerned, by talking about integration and segregation. This committee is not concerned in that. This committee is concerned in what you are doing in behalf of the Communist conspiracy. It may be that your actions parallel, as the chairman said, a very humanitarian thing, a thing which is emotional and a thing in which many of us are in sympathy.

I don't know but what I made as great contribution to civil rights as you have, as a member of the Congress, because I also voted for a great many things, but I voted for them out of American principles, and I have not agitated for them out of any sympathy for the Communist cause.

Mr. BRADEN. Anything I do is done by American principles, Mr. Jackson, and you asked me if I think you should be investigating violence; and I think you should be investigating against Jews and Negroes in the South, the bombing of synagogues, the bombing of Negro homes. That is the kind of thing you should be investigating.

Mr. JACKSON. I suggest that you go before the Congress of the United States and so petition it to change the charge on this committee.

Mr. BRADEN. Two hundred Negro leaders in the South petitioned the Congress of the United States last week in connection with this hearing in Atlanta.

Mr. JACKSON. After looking at some of the names on this list, the letters went into the circular files of many members, because it was quite obvious that a number of names on that letter were names of those that had been closely associated with the Communist Party. Their interest and major part does not lie with honest integration. Their interest lies with the purposes of the Communist Party. And that is what we are looking into, and let us not be clouding this discussion and this hearing this morning by any more nonsense that we are here as representatives of the United States Government to further, or to destroy, or to have anything to do with, integration. I resent it as an individual member of the Congress.

Mr. BRADEN. I think the 200 Negro leaders who signed that statement ought to resent your statement about their political affiliations.

Mr. ARENS. Now we would like to display to you a copy of this statement which you have just alluded to, which has been received in many quarters in the United States Congress. Did you prepare that open letter, which was signed by a number of people and—

Mr. BRADEN. Shall I read it first?

Mr. ARENS. Directed to the United States Congress? Did you prepare that letter? Kindly answer the question.

Mr. BRADEN. I would like to read the letter, sir.

Mr. ARENS. Take your time and read it, yes, sir.

Mr. BRADEN. This is an open letter to the United States House of Representatives:

We are informed that the Committee on Un-American Activities of the House of Representatives is planning to hold hearings in Atlanta, Georgia, at an early date.

As Negroes residing in Southern States and the District of Columbia, all deeply involved in the struggle to secure full and equal rights for our people, we are very much concerned by this development.

We are acutely aware of the fact that there is at the present time a shocking amount of un-American activity in our Southern States. To cite only a few examples, there are the bombings of the homes, schools, and houses of worship of not only Negroes but also of our Jewish citizens; the terror against Negroes in Dawson, Ga.; the continued refusal of boards of registrars in many Southern communities to allow Negroes to register and vote; and the activities of White Citizens Councils encouraging open defiance of the United States Supreme Court.

However, there is nothing in the record of the House Committee on Un-American Activities to indicate that, if it comes South, it will investigate these things. On the contrary, all of its activities in recent years suggest that it is much more interested in harassing and labeling as "subversive" any citizen who is inclined to be liberal or an independent thinker.

For this reason, we are alarmed at the prospect of this committee coming South to follow the lead of Senator Eastland, as well as several state investigating committees, in trying to attach the "subversive" label to any liberal white Southerner who dares to raise his voice in support of our democratic ideals.

It was recently pointed out by four Negro leaders who met with President Eisenhower that one of our great needs in the South is to build lines of communication between Negro and white Southerners. Many people in the South are seeking to do this. But if white people who support integration are labeled "subversive" by congressional committees, terror is spread among our white citizens and it becomes increasingly difficult to find white people who are willing to support our efforts for full citizenship. Southerners, white and Negro, who strive today for full democracy must work at best against tremendous odds. They need the support of every agency of our Federal Government. It is unthinkable that they should instead be harassed by committees of the United States Congress.

We therefore urge you to use your influence to see that the House Committee on Un-American Activities stays out of the South—unless it can be persuaded to come to our region to help defend us against those subversives who oppose our Supreme Court, our Federal policy of civil rights for all, and our American ideals of equality and brotherhood.

This letter is dated July 22, 1958, which is the day that my subpoena was dated in Washington, D. C., by Congressman Francis Walter. There it is.

Mr. ARENS. Now would you kindly answer just 2 questions with reference to this letter? Question number 1 is: What did you, an identified member of the Communist Party, have to do with this letter?

Mr. BRADEN. I will have to stand on my first amendment rights for private beliefs and association on the grounds that the question has no possible pertinency to any legislation.

Mr. ARENS. Now question number 2—

Mr. WILLIS. I think you should be more specific and ask him did he prepare it.

Mr. ARENS. Did you prepare the letter, Mr. Braden?

Mr. WILLIS. Or have anything to do with its preparation?

(The witness conferred with his counsel.)

Mr. BRADEN. I will have to stand again on the first amendment, the vagueness of the mandate of the committee, and the pertinency of the investigation and the legislative—

Mr. WILLIS. The Chair wants to make this statement for the record: Of course, let me assure you that this committee is not in accord with your alleged grounds as the basis for refusing to answer these questions.

On the contrary, we take a different view. You have 2 counsel, and I know you realize why I am making this clear. You have your choice. You may allow your counsel to confer with you. We think a basis has been made; we are quite familiar, I assure you, with the decisions to which you refer. And I want to make the record perfectly clear.

Mr. BRADEN. Yes, sir.

Mr. WILLIS. I think you understand the position of this committee.

Mr. BRADEN. Yes, sir, I do. And I hope you understand my position.

Mr. JACKSON. Mr. Chairman, I want to join the chairman in his statement. I, too, am not satisfied with the reason he gives for declining to answer the question. I think the record should show very affirmatively that there is an instance of communication signed by a number of individuals and addressed to Members of the Congress of the United States.

There is a very strong possibility that that letter was prepared by a Communist; and it points up one of the things that this committee has been trying to put across, that well-meaning people pursuing a very worthwhile goal are very frequently not sufficiently advised as to what they are doing when they lend their names to various petitions, letters, and so forth. A very strong likelihood exists—and we cannot know because of the refusal of the witness to answer whether he prepared this letter—but a strong likelihood exists that the letter in question was prepared under Communist direction; that those who signed it signed a document which was prepared by the Communist Party for their own purposes.

Thank you, Mr. Chairman.

Mr. BRADEN. I am sure the people who signed the letter will appreciate those aspersions, Mr. Jackson.

Mr. JACKSON. The people who did what?

Mr. BRADEN. The people who signed the letter, I am sure, will appreciate the aspersions on their intelligence.

Mr. JACKSON. If they will pay a little more attention to what they are doing and have a little less concern about some of the other non-important things, I think everyone concerned will get along a lot better.

Mr. BRADEN. I think that would be true of the committee.

Mr. JACKSON. I still say that the attribution on the letterhead appears that it has been prepared by a Communist organization that has been cited.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the entire document that I displayed to the witness be appropriately marked and incorporated by reference in the record.

Mr. WILLIS. Let the document be so incorporated.

(Document marked "Braden Exhibit No. 1," and retained in committee files.)

Mr. BRADEN. Will that include the signers, Mr. Chairman, the names of the signers also?

Mr. ARENS. Now, Mr. Braden, please tell the committee when you were last here in the Atlanta area pursuant to your work.

(The witness conferred with his counsel.)

Mr. BRADEN. I am trying to think exactly when it was, sir. The latter part of May.

Mr. ARENS. Of this year?

Mr. BRADEN. Yes, sir.

Mr. ARENS. Were you here pursuant to the official assignment which you have as a field organizer or field secretary, as it were, of the Southern Conference Educational Fund?

Mr. BRADEN. Yes, sir. I travel all over the South in the interest of integration.

Mr. ARENS. And where did you hold your meeting here in May?

Mr. BRADEN. Did you ask me about a meeting?

Mr. ARENS. Did you have a meeting here in May?

Mr. BRADEN. Again I will have to stand on the first amendment on the grounds that this is an invasion of private belief and association; that the question has no possible pertinency to any possible legislative purpose; and that the mandate establishing this committee is too vague for anybody to know what you are investigating.

Mr. ARENS. Mr. Chairman, I hope and expect and am relying upon the request that I made that the explanation of pertinency which I gave at the outset of this interrogation carries over with reference to each of these principal questions.

Mr. BRADEN. That is understood, sir.

Mr. ARENS. Were you in the Atlanta area in December of 1957?

Mr. BRADEN. I beg your pardon, sir?

Mr. ARENS. Were you in the Atlanta area in December of 1957?

Mr. BRADEN. Yes.

Mr. ARENS. And did you participate in a meeting here at that time?

Mr. BRADEN. Again the first amendment; same grounds, sir. Do I have to repeat it each time, or is it understood each time?

Mr. WILLIS. Well, it is understood that you are referring to the first amendment.

Mr. BRADEN. The challenging of the pertinency of the question, challenging the mandate of the committee, and my rights under the first amendment.

Mr. ARENS. Then, Mr. Chairman, if there is to be an understanding on this record that there is, in response to each of these principal questions, a challenge to the pertinency of the question, I respectfully suggest and request that the record likewise in each instance, unless otherwise directed by the chairman, show a direction to the witness to answer the question.

Mr. WILLIS. Yes. In order to establish the basis for any proceeding that might conceivably be instituted, do you understand that you are ordered to answer these questions, meaning that the committee disagrees with your position and is insisting upon pertinency? Do we understand that?

Mr. BRADEN. Yes. I understand, and I disagree with the committee, and I will understand that you are directing me to answer each question in order to expedite the matter so that we will not be wasting the committee's time and everybody else's time on this.

Mr. ARENS. I will not, however, be precluded—

Mr. WILLIS. Let me suggest this: I think our budget for national defense is something like, oh, \$38 to \$40 billion per year. And I think we all know that the troublemakers are the masters of the Kremlin—Communist conspiracy, worldwide I am talking about—and here the representatives of the people in Congress feel compelled to spend the taxpayers' money, this huge sum. And to indicate what a billion dollars is, it comes to my mind that, as a matter of arithmetic, a billion minutes have not ticked or gone by since the birth of Christ, and we are spending almost \$40 billion a year to fight this very thing to defend ourselves.

Now, sir, you are placing yourself in a position of saying that Congress has no right to inquire into the Communist conspiracy in America.

Next question.

Mr. BRADEN. I am not saying you have no business at that. I am just saying your mandate is so vague that nobody knows what you have a right to investigate, and the Supreme Court has indicated—

Mr. WILLIS. You will be surprised how familiar we are with the decisions.

Mr. BRADEN. The Watkins—

Mr. WILLIS. That is all right. Proceed.

Mr. ARENS. Now, Mr. Chairman, I should like, notwithstanding the general direction that the explanation of pertinency carries over to the principal questions, to add a brief explanation with reference to the question which I intend to propound in just a moment.

Before this committee, Mr. Braden, a day or so ago, Mr. Armando Penha took an oath and testified respecting Communist Party techniques—Mr. Penha was in the Communist conspiratorial operation in this country at the behest of the Federal Bureau of Investigation, and he served there for 8 years. In the course of his testimony yesterday he said, in effect on this issue, that the comrades are under a directive to penetrate non-Communist organizations, fine, patriotic, humanitarian organizations for the purpose of worming their way into further the Communist objectives.

I am now going to display to you, sir, some photographs, showing you and your wife entering the American Red Cross Building in Atlanta, December of 1957, at which time it is our understanding you were a participant in sessions there. We should like to have you, first of all, look at these photographs and tell the committee whether or not they are true and correct reproductions of your physical features as you were entering the American Red Cross in December of 1957, a fine, humanitarian, patriotic organization.

Mr. BRADEN. Before we get to that, Mr. Arens, you said that Mr. Penha made some statements there.

Mr. ARENS. Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question: This record is crystal clear if I ever saw one.

Mr. BRADEN. Mr. Chairman, the man made a lot of statements.

Mr. ARENS. I do not think the committee needs to be harassed or bugged with by an identified Communist.

Mr. WILLIS. Answer the question.

Mr. ARENS. Now, sir, kindly answer the question.

Mr. BRADEN. Shall I take these pictures one by one?

Mr. ARENS. Kindly tell us whether or not these pictures are a true and correct reproduction of yourself and your wife entering the American Red Cross Building in December of 1957.

Mr. BRADEN. While we are at it, my wife is not here, so I guess I can identify all of us, let's see. This is a picture of me and James A. Dombrowski, executive secretary of the Southern Conference Educational Fund, and Mrs. Anne Braden, myself and Aubrey W. Williams, publisher of the Southern Farm and Home, who was director of the National Youth Administration under Franklin D. Roosevelt, one of the many liberal white Southerners in the South who has been under attack for his position on integration.

While we are on the question of the Southern Conference Educational Fund, Mr. Chairman, since I think we—

Mr. WILLIS. Please do not—

Mr. ARENS. I respectfully suggest, Mr. Chairman, the witness now be ordered and directed to answer this particular question.

Mr. BRADEN. I did answer it. I said what the picture showed.

Mr. ARENS. You did not, sir. Do those pictures fairly and honestly and accurately represent you and your wife as you were entering the American Red Cross in December of 1957?

Mr. BRADEN. These are pictures taken from a building across the street, apparently by persons spying on the board of the Southern Conference Educational Fund which met at the American Red Cross Building here in Atlanta last December 15. This is a common technique for harassing liberals in the South.

Mr. ARENS. Now, did the Southern Conference Educational Fund meet in the American Red Cross Building in December of 1957?

Mr. BRADEN. It is a matter of public record that they did, and you probably have a copy of the board meetings.

Mr. ARENS. Excuse me. Who solicited the quarters to be made available to the Southern Conference Educational Fund?

Mr. BRADEN. I will have to stand on my previous refusal to answer on the same grounds, first amendment and so forth.

Mr. ARENS. Did you participate in the session?

Mr. BRADEN. Same grounds.

Mr. ARENS. The record is clear, is it not, Mr. Chairman and counsel to the witness, that in response to each of these refusals to answer, the Chair has given a direction and there has been an appropriate explanation of the pertinency?

I see you nod your head. The reporter cannot get a yes from your nod.

Mr. BRADEN. I understand. My counsel and I understand that.

Mr. ARENS. Now, sir, are you connected with the Emergency Civil Liberties Committee?

Mr. BRADEN. Same ground.

Mr. WILLIS. You mean you refuse to answer on the same ground?

Mr. BRADEN. Yes, sir. I refuse to answer on the same ground. It being, you know—do we have to go through it each time or will it be understood, sir?

Mr. ARENS. Was your association with Harvey O'Connor, an identified Communist, in Rhode Island in furtherance of the work of the Emergency Civil Liberties Committee?

Mr. BRADEN. I was on vacation in Rhode Island, Mr. Arens, and you sent a subpoena up there and took me off my vacation where it was cool and brought me down here in Atlanta where it is 90 degrees.

Mr. JACKSON. It is just as hot for the committee. I might add.

Mr. BRADEN. You can always go back to Washington.

Mr. JACKSON. That is not much improvement.

Mr. ARENS. Now kindly answer the question. Did you and Harvey O'Connor, in the course of your conferences there in Rhode Island, develop plans and strategies outlining work schedules for the Emergency Civil Liberties Committee?

Mr. BRADEN. Same answer on the same grounds, Mr. Chairman: same refusal to answer on the same ground.

Mr. ARENS. Now, in addition to the letter attacking this committee—and we are used to it—by the Southern Conference Educational Fund, have you, as a field representative or field organizer of the Southern Conference Educational Fund, promoted, stimulated, political pressure, or attempted political pressure, on the United States Congress with reference to security measures pending in the Congress?

Mr. BRADEN. I am afraid the question is too vague for an answer, Mr. Chairman.

Mr. ARENS. I will be specific then, sir. I will display, if you please, sir, a photostatic reproduction of a letter on the letterhead of the Southern Conference Educational Fund, signed Carl and Anne Braden, field secretaries.

Mr. BRADEN. May we have it read into the record?

Mr. ARENS. I am going to display it to you—in which, among other things, the recipient of the letter, "Dear Friend," is asked to write their Senators and Congressmen to oppose S. 654, S. 2646, and H. R. 977, all of which are security measures pending in the United States Congress.

Kindly tell this committee while you are under oath, sir, whether or not that photostatic reproduction of that letter is true and correct and valid.

Mr. BRADEN. I will have to read it first.

"Dear Friend"—

Mr. WILLIS. After you read it—are you going to just read it, or will you answer the question as to whether you signed it or not, if it proves—

Mr. BRADEN. It will indicate from the letter that I signed it, I think, I mean whether I did or not. If it is a letter I wrote, it is bound to have my name on it.

Dear Friend:

We are writing to you because of your interest in the Kentucky "sedition" cases, which were thrown out of court on the basis of a Supreme Court decision declaring state sedition laws inoperative.

There are now pending in both houses of Congress bills that would nullify this decision. We understand there is real danger that these bills will pass.

We are especially concerned about this because we know from our own experience how such laws can be used against people working to bring about integration in the South. Most of these state statutes are broad and loosely worded, and to the officials of many of our Southern states integration is sedition. You can imagine what may happen if every little local prosecutor in the South is turned loose with a state sedition law.

It is small comfort to realize that such cases would probably eventually be thrown out by the Supreme Court. Before such a case reaches the Supreme Court, the human beings involved have spent several years of their lives fighting off the attack, their time and talents have been diverted from the positive struggle for integration, and money needed for that struggle has been spent in a defensive battle.

It should also be pointed out that these bills to validate state sedition laws are only a part of a sweeping attack on the U. S. Supreme Court. The real and ultimate target is the court decisions outlawing segregation. Won't you write your two senators and your congressman asking them to oppose S. 654, S. 2646, and H. R. 977. Also ask them to stand firm against all efforts to curb the Supreme Court. It is important that you write—and get others to write—immediately as the bills may come up at any time.

Cordially yours,

CARL AND ANNE BRADEN.

Mr. ARENS. Did you sign that letter?

Mr. BRADEN. Our signature is on the letter.

Mr. ARENS. Were you a member of the Communist Party the instant you affixed your signature to that letter?

Mr. BRADEN. I refuse to answer on the same ground previously stated, Mr. Chairman.

Mr. JACKSON. Mr. Chairman—

Mr. ARENS. Mr. Braden, are you connected in any way with the Southern Newsletter?

(The witness conferred with his counsel.)

Mr. ARENS. I might explain to you. We had a man who has been identified as a Communist—

Mr. BRADEN. Who is that?

Mr. ARENS. Eugene Feldman, who lives in Chicago, Illinois. He is the editor of the Southern Newsletter. We had him before the committee yesterday, at which time we displayed to him the application for a post office box made on behalf of the Southern Newsletter, a publication which is developed in Chicago, which is sent to a post office box in Louisville, Kentucky, and then mailed out over the South. I would just like to ask you whether or not you, being a resident of Louisville, Kentucky, have anything to do there with the Southern Newsletter?

Mr. BRADEN. I think you are now invading freedom of the press, Mr. Arens and Mr. Chairman. I object to your invasion of the free-

dom of the press, and I also decline to answer the question on the same grounds. You are not only attacking integrationists, you are attacking the press.

Mr. ARENS. We have no further questions, if you please, Mr. Chairman.

Mr. WILLIS. Any questions, Governor?

Mr. TUCK. I have no questions.

Mr. JACKSON. I would say anyone who labors under the delusion that the Communist press is anything close to free is certainly making a very serious mistake.

However, I think, Mr. Counsel, with reference to the letter sent out by the Southern Conference Educational Fund, and signed by a number of individuals, there may conceivably be some of those who signed the letter who did not realize that it was sponsored by a Communist front. For that reason I think, in all fairness, that those who might desire, if there are any who might desire, to withdraw their names from that letter before it becomes a part of the official archives of our Committee on Un-American Activities should be given opportunity to do so on request of the committee.

Mr. BRADEN. Mr. Chairman, since he made charges against—

Mr. WILLIS. He is not making charges. He is making a statement for the record.

Mr. BRADEN. Southern Conference being a Communist front.

Mr. JACKSON. I am told the Internal Security Subcommittee of the Committee on Judiciary of the United States Senate has so characterized it.

Mr. BRADEN. I think we ought to be allowed to introduce in evidence a brochure showing what the Southern Conference Educational Fund is about. Give decency a chance in the South.

Mr. ARENS. In view of the distinguished Congressman's observation on the Southern Conference Educational Fund, the organization which has been cited as a Communist front with which this man has a connection as an identified Communist is the Emergency Civil Liberties Committee. The Southern Conference Educational Fund itself is, for all practical purposes, the successor organization to the Southern Conference for Human Welfare, which itself had been cited as a Communist front. The Senate Internal Security Subcommittee ran an investigation of the Southern Conference Educational Fund—and I say in passing that I happen to have been identified with the Internal Security Subcommittee at that time and did the interrogating of the witnesses.

The report of the Internal Security Subcommittee with reference to the Southern Conference Educational Fund concludes substantially as follows—this is not an exact quotation; it is only from memory—that an objective appraisal from the record compels the conclusion that the Southern Conference Educational Fund is, for all practical purposes, operating under the same leadership and for the same objectives as the Southern Conference for Human Welfare.

Mr. BRADEN. May we have the record show, then, Mr. Chairman, that the Southern Conference Educational Fund was not specifically listed as he said—

Mr. JACKSON. Very well, Mr. Chairman.

Mr. BRADEN. Originally.

Mr. ARENS. That is one of the purposes why we wanted to interrogate you, because you are an identified Communist by a reliable, responsible witness who placed her liberty on the line and said, "While I was in the Communist Party, I knew him, to a certainty, as a member of the Communist Party conspiracy." That is you. You are now the field representative in this committee. We may desire eventually to consider a citation of the Southern Conference Educational Fund on the basis of the information which we are now and elsewhere developing.

Mr. TUCKER. Mr. Chairman, could I make a statement?

Mr. WILLIS. No, you may not, Counsel for the witness.

Mr. TUCKER. Not in connection with this at all.

Mr. WILLIS. Well, you might talk to the committee counsel. You are not being examined. You are only a lawyer here.

The committee will stand in recess for 10 minutes.

(Members present: Representatives Willis, Tuck, and Jackson.)

(A brief recess was taken.)

(Subcommittee members present: Edwin E. Willis, presiding, William M. Tuck, and Donald L. Jackson.)

Mr. WILLIS. The subcommittee will please come to order.

Counsel will call his next witness.

Mr. ARENS. Frank Wilkinson, kindly come forward.

Mr. WILLIS. Please raise your right hand. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WILKINSON. I do.

TESTIMONY OF FRANK WILKINSON

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. WILKINSON. My name is Frank Wilkinson.

Mr. ARENS. And your residence, please, sir?

Mr. WILKINSON. As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee.

Mr. ARENS. And your occupation, please, sir?

Mr. WILKINSON. As a matter of personal conscience and responsibility, I refuse to answer any questions of this committee.

Mr. ARENS. You are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. WILKINSON. I am.

Mr. ARENS. And you are not represented by counsel?

Mr. WILKINSON. I am not.

Mr. ARENS. You know you have the privilege of counsel?

Mr. WILKINSON. I do.

Mr. ARENS. Mr. Wilkinson, are you now a member of the Communist Party?

Mr. WILKINSON. As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee.

Mr. ARENS. Now, sir, I should like to make an explanation to you of the reasons, the pertinency, and the relevancy of that question and certain other questions which I propose to propound to you; and I do

so for the purpose of laying a foundation upon which I will then request the chairman of this subcommittee to order and direct you to answer those questions.

The Committee on Un-American Activities has two major responsibilities which it is undertaking to perform here in Atlanta.

Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal security laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Communist Party and the Communist conspiratorial operations in the United States. H. R. 9937 is one of those. Other proposals are pending before the committee not in legislative form yet, but in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

Now with reference to pertinency of this question to your own factual situation, may I say that it is the information of this committee that you now are a hard-core member of the Communist Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee, including a particular committee in California and a particular committee in Chicago, a committee—the name of which is along the line of the committee for cultural freedom, or something of that kind. I don't have the name before me at the instant.

It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

Now, sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we intend to pursue that area of inquiry and undertake to solicit from you information respect-

ing your activities as a Communist on behalf of the Communist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled "Operation Abolition," in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light, to destroy the F. B. I. and discredit the director of the F. B. I. and to undertake to hamstring the work of this Committee on Un-American Activities.

So if you will answer that principal question, I intend to pursue the other questions with you to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States of America under whose flag you, sir, have protection.

Now please answer the question: Are you now a member of the Communist Party?

Mr. WILKINSON. I am refusing to answer any questions of this committee.

Mr. ARENS. Mr. Chairman, I respectfully suggest now that the record reflect an order and direction of the chairman to the witness to answer this question.

Mr. WILLIS. I will so order, but before doing so I want to add this remark about pending legislation.

There is a bill pending right now before the Congress. We have held hearings on it just a couple of weeks ago on the question of the organizational features of the Communist conspiracy. Specifically the Supreme Court, in what is popularly referred to as the Yates Case, held that the Communist Party must be regarded as having been organized in 1945 and that automatically thereby all prosecutions for organizational features have been destroyed and no more prosecution is possible.

We take the position that what happened in 1945 was a reconstruction of the party, rather than an organization of it; that it had been organized years before. And we received evidence yesterday along the lines of the present techniques in connection with new organizational efforts; and among other reasons for pertinency of these hearings, would be the development of information which we feel you have, sir, that you could shed light on the current methods of organizing or regrouping or reconstructing of the party and subdivisions thereof.

I make that plain to you because it is necessary under the decision that that be done. It is necessary that we set forth for the record a description of the pertinency of the hearings, which has been done by counsel, and I have tried to implement it. And then it is necessary for us to warn you that we disagree with your position as a basis for possible contempt proceedings.

Now, thus far, your position is simply that you will not have anything to say to this committee. You are not represented by counsel. I tell you that it would be better for you, as a matter of protection of your own rights, if you fear that what we develop through you might tend to incriminate you that you would have the right to invoke

the privilege of the fifth amendment if you honestly fear that the answers to the questions propounded to you would tend to incriminate you. But you are not doing that, sir. You are simply, point blank, taking the position of obvious contempt for this committee and its purposes. You have not invoked any constitutional provision that you could invoke if you honestly fear that to testify here would get you in criminal trouble.

So having explained that to you, I now order and direct you to answer the question.

Mr. WILKINSON. I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.

I am, therefore, refusing to answer any questions of this committee.

Mr. WILLIS. Proceed, Mr. Arens.

Mr. ARENS. I should like, if you please, sir, to read you some testimony taken under oath in Los Angeles, California, on December 7, 1956, in which a witness Anita Schneider was testifying. Mrs. Schneider had been, in the course of previous testimony, testifying about an organization known as the Citizens Committee to Preserve American Freedoms. Mrs. Schneider gave a response which precipitated this question from myself:

Was it Communist controlled?

A. Yes.

Q. Who was the ringleader in that organization?

A. I didn't work in that organization and I don't know who the ringleader was. My contact on that occasion was with Frank Wilkinson, I believe.

Q. Did you know him as a Communist?

A. Yes.

Q. Have you any further information with reference to those two documents to which you are now alluding?

A. Yes. Mr. Wilkinson asked me to start a similar organization or branch of that organization in the San Diego area. He said that he would give me a list of professional people—teachers, doctors, and lawyers—in the San Diego area and that I should contact them in an attempt to set up such a committee in San Diego.

And I skip a paragraph which is not germane to this particular subject matter. Then she continues:

When I discussed this with Frank Wilkinson in Los Angeles, I said that since I wasn't a professional person, at that time I wasn't active publicly, that perhaps it might be better to have someone else head it.

Mr. Wilkinson, was Mrs. Schneider telling the truth when she took an oath before this committee and testified that she knew you as a Communist?

Mr. WILKINSON. I am refusing to answer questions.

Mr. ARENS. Do you know Mrs. Anita Schneider?

Mr. WILLIS. I think I should order him to answer that question.

Mr. ARENS. If you will please, sir; yes, sir. And I respectfully suggest, Mr. Chairman, that the record reflect the intention of myself that the explanation of pertinency and relevancy which I previously gave is applicable to the particular question which is now outstanding.

Mr. WILKINSON. I refuse to answer any questions of this committee on the grounds which I have stated previously.

Mr. ARENS. Mr. Wilkinson, where were you when you were subpoenaed to appear before the Committee on Un-American Activities in this particular session?

Mr. WILKINSON. I am refusing to answer questions.

Mr. ARENS. I should like, if you please, sir, to display to you a photostatic reproduction of the registration at the Atlanta Biltmore Hotel, Atlanta, Georgia, of yourself and one Dr. James A. Domrowski, obviously registered together on July 23. This bears in handwriting the name "Frank Wilkinson; Street, 421-7th Avenue, New York City-27, New York; Business Sm., Emergency Civil Liberties Committee; Street, same. I plan to check out in a week, Room No. 253," I believe.

Kindly look at that photostatic reproduction of your registration on July 23 here in Atlanta and tell this committee, while you are under oath please, sir, whether or not that is a true and correct reproduction of the registration as you filled it out on July 23 at the Atlanta Biltmore Hotel in Atlanta, Georgia.

Mr. WILLIS. He has asked you to identify the document, the registration.

Mr. ARENS. I beg your pardon, sir.

Mr. WILLIS. I am explaining to him—

Mr. ARENS. Excuse me.

Mr. WILLIS. —that you asked him to identify the registration document.

Mr. ARENS. I asked him to look at it and tell whether or not it is a true and correct reproduction of the form as he filled it out at the Atlanta Biltmore Hotel, Atlanta, Georgia, on July 23, 1958.

Would you kindly answer the question?

Mr. WILLIS. Do you understand the question?

Mr. WILKINSON. I am refusing to answer any questions of this committee.

Mr. ARENS. Mr. Chairman, I respectfully suggest, so that this record may be abundantly clear, that the explanation of pertinency previously given be related into this particular question on our record and that there be an order and direction to this witness to answer the question.

Mr. WILLIS. You are ordered to answer the question.

Mr. WILKINSON. I refuse to answer any questions of this committee on the grounds of my initial answer. The House Committee on Un-American Activities stands in direct violation of the first amendment to the United States Constitution.

Mr. ARENS. Now, Mr. Chairman, I respectfully suggest that the document which was obtained by subpoena by this committee from the Atlanta Biltmore Hotel be appropriately marked and incorporated by reference in this record.

Mr. WILLIS. It will be so marked and incorporated.

(Document marked "Wilkinson Exhibit No. 1," and retained in committee files.)

Mr. ARENS. Now I should like to display to you, Mr. Witness, another document. It is a photostatic reproduction of some telephone calls made by Frank Wilkinson over the course of a number of days beginning on July 23, 1958, from the Atlanta Biltmore Hotel—a number of long distance telephone calls. At least there are long distance telephone calls on this.

I should like to display this document to you and ask you whether or not you made the calls to the places indicated in the document at the time revealed by the document.

Mr. WILKINSON. I am answering no questions.

Mr. ARENS. Mr. Chairman, I respectfully suggest that this document which was obtained by subpoena from the Committee on Un-American Activities served upon the officials of the Atlanta Biltmore Hotel be incorporated by reference in the record.

Mr. WILLIS. Let it be incorporated.

(Document marked "Wilkinson Exhibit No. 2," and retained in committee files.)

Mr. ARENS. And that the witness now be ordered and directed to answer the question and that the record reflect at this point the explanation of pertinency and the powers and duties and responsibilities of this committee.

Mr. WILLIS. You are so ordered.

Mr. WILKINSON. I refuse to answer any questions of this committee on the grounds of my initial refusal.

Mr. ARENS. Are you now the principal driving force, the leader, of the Emergency Civil Liberties Committee?

Mr. WILKINSON. I refuse to answer any questions.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the record again reflect an order and direction to this witness to answer the question and that the record at this point reflect the explanation of pertinency and relevancy, the powers and duties of this committee as previously developed in the record.

Mr. WILLIS. You are so ordered.

Mr. WILKINSON. I refuse to answer any questions of this committee on the grounds of my initial answer. The mandate of the House Committee on Un-American Activities stands in direct violation of the first amendment to the United States Constitution.

Mr. JACKSON. Mr. Chairman, so that the record may be absolutely clear. The witness has made reference to the first amendment. It is not clear to me whether or not the witness intends or is invoking the provisions of the first amendment in his declination to answer the questions.

Mr. WILKINSON. My initial answer stands as my answer.

Mr. JACKSON. No. I am not at all satisfied with it. It might well be that the reference to the first amendment might conceivably be interpreted as relying upon the first amendment, where the witness has not specifically indicated that he is so relying, Mr. Chairman.

Mr. WILLIS. And you are asking him if he is relying on the first amendment to the Constitution as a basis for his refusal to answer these questions?

Mr. JACKSON. That was the purport of my question.

Mr. WILKINSON. My initial answer is my answer.

Mr. JACKSON. What again, if you will please, for the record, was your original and initial answer?

Mr. WILKINSON. My initial answer is my answer.

Mr. JACKSON. I think this point should be clarified at some stage during the proceedings, Mr. Chairman.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the return of the United States marshal showing the time and place of service of the subpoena upon Frank Wilkinson at the Atlanta Biltmore Hotel be incorporated by reference in this record.

Mr. WILLIS. It will be so incorporated.

(Document marked "Wilkinson Exhibit No. 3," and retained in committee files.)

Mr. ARENS. Now, sir, I put it to you as a fact and ask you to affirm or deny the fact that you are part of an enterprise to destroy the very Constitution of the United States under which we all have protection; that you are the agent of the Communist Party as an arm of the international Communist conspiracy sent into Atlanta for the purpose of engaging in conspiratorial activities on behalf of the Communist Party. If that is not so, deny it while you are under oath.

Mr. WILKINSON. I am answering no questions of this committee.

Mr. ARENS. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

Mr. TUCK. I have no questions.

Mr. WILLIS. I want to pursue a little, for a moment, the questions asked by the gentleman from California. And I wish you would understand sir, that the idea in his mind, as in mine, is that the record will reflect, as much for your protection as for the benefit of the committee, the basis for your refusal to answer these questions.

You have not made it abundantly clear whether you are invoking the protection of the first amendment upon a feeling on your part that you want to personally rely, and it is a personal matter to you, on that amendment as a basis for refusal or whether your reference to the amendment is, let us say, philosophical conversation or some other ideas you might have in mind.

Will you not please try to clarify that point for us?

Mr. WILKINSON. My answer is my answer.

Mr. JACKSON. Mr. Chairman, let the record show I am not satisfied with that answer.

Mr. WILLIS. I think the part and parcel of the whole record is a reflection of an attitude on the part of the witness which is obvious I think to everyone.

Mr. ARENS. We have no further questions of this witness, Mr. Chairman. We have another witness.

Mr. WILLIS. You are excused.

Proceed, Mr. Arens.

Mr. ARENS. Madge Spurny Cole kindly come forward.

Kindly remain standing while the chairman administers an oath to you.

Mr. WILLIS. Kindly raise your right hand.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God.
Mrs. COLE. I do swear.

**TESTIMONY OF MADGE SPURNY COLE, ACCOMPANIED BY COUNSEL
JOSEPH FORER**

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mrs. COLE. My name is Madge Spurny.

Mr. WILLIS. A little louder, please.

Mrs. COLE. My name is Madge Spurny Cole. My residence is 1204 Homeland Avenue, Greensboro, North Carolina. My occupation is a textile worker.

Mr. ARENS. You are appearing today, Mrs. Cole, in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mrs. COLE. Yes, sir.

Mr. ARENS. And you are represented by counsel?

Mrs. COLE. Yes, sir.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. FORER. Joseph Forer, Washington, D. C.

Mr. ARENS. Where are you employed, Mrs. Cole?

Mrs. COLE. I am employed at the Cone Mills at Greensboro, North Carolina.

Mr. ARENS. How long have you been so employed?

Mrs. COLE. It is approximately 2 years. I am not too clear on the exact dates.

Mr. ARENS. In what capacity?

Mrs. COLE. At present I am a spare hand in a spinning department.

Mr. ARENS. What was your employment immediately prior to your present employment?

Mrs. COLE. Prior to my present employment I was employed as a waitress.

Mr. ARENS. Over what period of time, please?

Mrs. COLE. Oh, about a year and a half, probably.

Mr. ARENS. Where were you born?

Mrs. COLE. I was born in New York State.

Mr. ARENS. Where in New York State?

Mrs. COLE. In a small town called Springfield Center.

Mr. ARENS. And would you kindly tell us a word about your formal education?

Mrs. COLE. I attended grammar school and high school in this town—I believe the name is the Springfield Center School—and graduated. Then I attended Cornell University in New York and received a bachelor of arts degree. Then—

Mr. ARENS. Excuse me. When did you receive this Bachelor of Arts degree?

Mrs. COLE. Again I will have to say my dates on these are approximate. Possibly 1945, but I am not positive.

Mr. ARENS. Did that complete your formal education?

Mrs. COLE. No, sir.

Mr. ARENS. Kindly tell us about any other formal education which you have had:

Mrs. COLE. I did graduate work at Syracuse University in New York.

Mr. ARENS. And in what field did you pursue the graduate work?

Mrs. COLE. In Science Education.

Mr. ARENS. Did you receive a graduate degree of some kind?

Mrs. COLE. Yes, sir.

Mr. ARENS. What degree did you receive?

Mrs. COLE. A master's, and I am not exactly right on this title. Master's degree in Science Education.

Mr. ARENS. When did you receive this master's degree?

Mrs. COLE. Possibly in 1946 or '47.

Mr. ARENS. Did that complete your formal education?

Mrs. COLE. Yes, sir.

Mr. ARENS. What was your first principal employment after you received your master's degree?

Mrs. COLE. All during my academic education it was necessary for me to work, and I have had numerous odd jobs all during my college education.

Mr. ARENS. Yes. After you received your master's degree from Syracuse University, what was your principal employment?

Mrs. COLE. I went to work. I did odd jobs.

Mr. ARENS. Where, please?

Mrs. COLE. I worked as a waitress. I was sort of at loose ends at that point. I worked as a waitress in Boston and then I worked some in New York.

Mr. ARENS. And your next employment?

Mrs. COLE. My next employment was in a textile mill in Durham, North Carolina.

Mr. ARENS. What textile mill was that?

Mrs. COLE. That was the Erwin Mills.

Mr. ARENS. And when was that employment?

Mrs. COLE. Again let me just make this clear that all of these dates—

Mr. ARENS. We understand they are approximates.

Mrs. COLE. '49, or '48 to '49 to possibly '51.

Mr. ARENS. And in what capacity?

Mrs. COLE. As an inspector.

Mr. ARENS. How long did that employment endure?

Mrs. COLE. About 2 years or a little more.

Mr. ARENS. And your next employment?

Mrs. COLE. I had several odd jobs but my principal employment was hosiery mill.

Mr. ARENS. Where was that?

Mrs. COLE. In Durham.

Mr. ARENS. And in what capacity?

Mrs. COLE. As—it was a form of inspector. I think it was called a pattern.

Mr. ARENS. How long did that employment last?

Mrs. COLE. Approximately 2 years.

Mr. ARENS. And your next employment?

Mrs. COLE. My next major employment was as a waitress in a Howard Johnson restaurant.

Mr. ARENS. How long did that last, please?

Mrs. COLE. About a year, and a little more.

Mr. ARENS. What was your next employment?

Mrs. COLE. Then I came to Greensboro, North Carolina, and became employed at the Cone Mills.

Mr. ARENS. And has that employment endured without interruption since?

Mrs. COLE. Yes, sir.

Mr. ARENS. When did you begin your employment at the Cone Mills, 2 years ago, you say?

Mrs. COLE. Yes, sir, around some time in '56.

Mr. ARENS. Did you make application for employment at the Cone Mills?

Mrs. COLE. Yes, sir, I did.

Mr. ARENS. Did you fill out an application form?

Mrs. COLE. Yes, I think I did.

Mr. ARENS. Do you think you would recognize the document which I now display to you, a photostatic reproduction of the employment application? Please look at that document which I have now displayed to you and tell us whether or not that is a true and correct reproduction of the application which you filed at the Cone Mills, some 2 years ago, for employment.

(The witness conferred with her counsel.)

Mr. FORER. What is the question?

Mrs. COLE. Repeat the question, please.

Mr. ARENS. The question is, is the document which is presently before you a true and correct reproduction of the application which you filled out for employment at the Cone Mills?

Mrs. COLE. To the best of my ability to say—

Mr. ARENS. You will observe here in this document where the form calls for education, that you tell about your high school education at Springfield Central High. Do you see that, here on this application form, where you tell about your high school education?

(The witness conferred with her counsel.)

Mrs. COLE. Yes, sir.

Mr. ARENS. Did you put on the application form there about your college education and your Master's degree?

(The witness conferred with her counsel.)

Mrs. COLE. I don't see it there.

Mr. ARENS. Did you put it on there?

(The witness conferred with her counsel.)

Mrs. COLE. I think I already stated that I didn't see it there.

Mr. ARENS. Did you tell them about your college degree and your master's degree in these various courses which you took?

(The witness conferred with her counsel.)

Mr. FORER. Would you mind clarifying that question, Mr. Arens? Did you tell who took—we weren't in the conversation.

Mr. ARENS. Did you tell the people at Cone Mills where you were applying for the job?

Mrs. COLE. They wouldn't ask any more.

Mr. ARENS. Did you tell them whether or not you were a college graduate and had, in addition to a college graduate degree, a master's degree?

Mrs. COLE. Would you repeat that question?

Mr. FORER. Excuse me.

Mr. ARENS. Would the reporter kindly read the question.

And counsel is advised, please, sir, that you know your sole and exclusive prerogative is to advise your clients as to constitutional rights.

Mr. FORER. Yesterday the chairman of the subcommittee assured me, Mr. Willis—the chairman of the subcommittee, Mr. Walter, assured me yesterday he would not permit the photographs to be taken while the witness was testifying. It looks to me that that rule is being violated.

(The reporter read from his notes as requested.)

Mr. WILLIS. The rule will be obeyed. There will be no pictures taken.

Mrs. COLE. I am sorry. I still haven't heard the question read.

(The reporter read from his notes again as requested.)

Mrs. COLE. They didn't ask me and I didn't tell them.

(Document marked "Cole Exhibit No. 1" and retained in committee files.)

Mr. ARENS. Were you a Communist Party colonizer in these various textile plants at which you told us you have been employed?

(The witness conferred with her counsel.)

Mrs. COLE. Would you please explain—define your characterization there. I don't know what you mean.

Mr. ARENS. Perhaps I can help you a little bit.

The gentleman seated here to my right, a former FBI undercover agent in the Communist Party, explained on the record yesterday that he had served in the Communist Party in the United States for some years, and during the course of his service in the Communist Party he rose within the ranks of the conspiracy to where he had become a member of the National Textile Commission of the Communist Party. He explained yesterday that the Textile Commission of the Communist Party was developing a program of penetration into the South to follow the textile mills which have been moved, many from the New England States, and which are developing in the South. He explained that, as part of this program, he was a member of the Textile Commission of the Communist Party was in contact with a number of people of high education and training in the conspiracy who were going into the textile mills for the purpose of carrying on Communist Party underground activity. These people he characterized as colonizers.

Now, with that explanation tell us whether or not you were a colonizer.

(The witness conferred with her counsel.)

Mrs. COLE. Well, I am still not quite clear on your explanation.

Mr. ARENS. Maybe it would help you still further—

Mr. FORER. Maybe if I may—

Mr. ARENS. We are running these proceedings, Counsel.

Now I ask you whether or not you have ever been in conversation with, or whether or not you know, the gentleman seated at the right here whom I have identified, in my colloquy with you, as a former undercover agent of the FBI—do you know this gentleman seated here?

(The witness conferred with her counsel.)

Mrs. COLE. Mr. Chairman, may I ask you something?

Mr. WILLIS. There is a pending question. The immediate question is, Do you know the gentleman to whom counsel just referred?

Mrs. COLE. He asked several questions. Which do you prefer?

Mr. WILLIS. You have been begging the questions, and we tried to make them simple for you.

The outstanding question I now direct you to answer is the last one on record. Would you repeat that question, Counsel?

Mrs. COLE. What is it?

Mr. ARENS. Do you know the gentleman seated to my right here, whom I have identified, as the person who testified yesterday, as a former undercover agent of the FBI in the Communist Party? Do you know this gentleman?

(The witness conferred with her counsel.)

Mrs. COLE. Well, first I would like to say that you interfered something about my work there, that—

Mr. WILLIS. That is ~~not~~ the outstanding question. The question is a simple question.

Mrs. COLE. I would like to say that—

Mr. WILLIS. The simple question—

Mrs. COLE. A textile worker because—

Mr. WILLIS. Do you know this gentleman?

Mrs. COLE. I became a textile worker because a textile worker is a little better pay, I think, than some other jobs. Now, you—

Mr. JACKSON. The witness is deliberately avoiding an answer to the question.

Mr. WILLIS. I know, and counsel knows that his client is violating the rule and probably jumping right into contempt proceedings.

Mrs. COLE. I would like to answer the other question if I may. There is so much interference here.

Mr. WILLIS. The simple question that I now order you to answer is the last question propounded by the counsel.

Mrs. COLE. Would you please repeat it?

Mr. WILLIS. And it will be the last repetition. Let the record speak for itself from here on as to that question with regard to your demeanor here and your standing before the committee and the Congress it represents.

Mrs. COLE. Will you please repeat it finally, sir?

Mr. WILLIS. And I now order you to listen. At least I admonish you to listen and I order you to answer it.

Mrs. COLE. Yes, sir.

Mr. ARENS. Do you know the gentleman seated here to my immediate right, Mr. Armando Penha, who testified yesterday before this committee?

Mrs. COLE. I am going to have to refuse to answer that question on the basis of my rights under the first amendment, and because I do not consider the question pertinent to a legislative purpose and also on the basis of my privilege under the fifth amendment.

Mr. WILLIS. All right.

Mr. ARENS. Now, on the privilege under the fifth amendment, do you honestly apprehend that if you told this committee, while you are under oath, whether or not you know the gentleman seated here, Mr. Armando Penha, you would be supplying information which might be used against you in a criminal proceeding?

(The witness conferred with her counsel.)

Mrs. COLE. It is possible.

Mr. ARENS. Mr. Penha testified yesterday that while he was an undercover agent in the Communist Party, he knew you as a Communist Party colonizer. That is a pretty serious charge to bring against anyone, because we all know the Communist Party is part and parcel of an international conspiracy.

We would like to give you now an opportunity to deny while you are under oath, if a denial is in order, the testimony of Mr. Penha insofar as it is applicable to yourself. Do you care to avail yourself of that opportunity?

(The witness conferred with her counsel.)

Mrs. COLE. I am sorry, but I don't know what you mean.

Mr. ARENS. Was Mr. Penha telling the truth or was he in error when he identified you under oath as a person known by him to be a Communist Party colonizer?

(The witness conferred with her counsel.)

Mrs. COLE. Well, I will have to say again I am not clear on what is a Communist Party colonizer, and the only reason I went into the textile work is to make a living. I think it makes a better living than a white-collar job, better paying.

Mr. ARENS. Were you—excuse me.

Mrs. COLE. Go ahead.

Mr. ARENS. The witness hasn't answered the question, Mr. Chairman.

The question is was Armando Penha telling the truth yesterday when he took an oath before this committee and said that while he was an undercover agent of the FBI, he knew you as a Communist.

(The witness conferred with her counsel.)

Mr. FORER. That wasn't the question.

Mr. WILLIS. He is asking you to make it more simple. That was exactly in my mind. Now, let us get down to brass tacks and we will ask it in a simpler way.

The question is: Did this gentleman yesterday when he was under oath, and when if lying could be prosecuted, did he tell the truth or did he lie when he said he knew you to be a Communist?

(The witness conferred with her counsel.)

Mrs. COLE. Now, I refuse to answer on the same basis as previously.

Mr. ARENS. Mr. Penha, would you kindly stand up and come forward?

TESTIMONY OF ARMANDO PENHA—Resumed

Mr. ARENS. You have previously been sworn on this record, Mr. Penha?

Mr. PENHA. Yes, sir.

Mr. ARENS. You recognize that if you make a deliberate misstatement of a material fact while under oath to this committee, you will be prosecuted for perjury, do you not?

Mr. PENHA. Yes, sir.

Mr. ARENS. Do you see in the courtroom here in Atlanta today a person, Madge Spurny, whom you have identified on this record as a Communist?

Mr. PENHA. I do, sir.

Mr. ARENS. Would you kindly indicate her presence to the committee?

Mr. PENHA. She is sitting right there at present.

Mr. ARENS. Was she known by you, to a certainty, to have been during the period of your service in the Communist Party a member of the Communist Party?

Mr. PENHA. Absolutely, sir.

Mr. ARENS. Was she known by you, to a certainty, to have been a Communist Party colonizer?

Mr. PENHA. Absolutely, sir.

Mr. ARENS. Is there any doubt in your mind on the basis of your background and experience in the Communist Party conspiracy but what this witness herself knows what we mean and what you mean by the term "colonizer"?

Mr. PENHA. There is no doubt in my mind.

I might add that if anyone in the southern area can give instructions on colonization she is one. She is an expert.

TESTIMONY OF MADGE SPURNY COLE—Resumed

Mr. ARENS. Now, Mrs. Cole, would you kindly look to your left at this gentleman—look him in the face so there will be no accusation of the faceless informant, and the like—and tell this committee, while you are under oath, whether or not he is telling the truth.

(The witness conferred with her counsel.)

Mrs. COLE. I refuse to answer on the previous basis.

Mr. ARENS. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

Mr. WILLIS. Are there any questions?

Mr. TUCK. I have no questions.

Mr. JACKSON. Yes, Mr. Chairman.

I think it must occur to everyone who has heard this testimony, as it does occur to me, that it is very strange indeed that a woman of culture and education, holding a B. A. from Cornell University, who did graduate work at Syracuse University in Science Education, who holds a Master's degree in Scientific Education, would wind up in a job such as the one that she occupies. I note on the application—

Mrs. COLE. Is that such a bad job?

Mr. JACKSON. Pardon?

Mrs. COLE. Is that such a bad job? There are a lot of spinners in this area.

Mr. JACKSON. I have not worked in a mill. I do not know. I have nothing against the job.

Mrs. COLE. It is a very respectable job and very high job and well-paid job, and I am out to be a spinner.

Mr. JACKSON. Why did you in filling out your application for employment at the Cone Mills Corporation and in answer to Question 15 on the application which asks, "What do you know about working in a textile mill," answer in longhand, and I presume that is your answer, "Nothing"? However, in your preliminary testimony before this subcommittee you testified that you had previously been employed as an inspector in a textile mill. Is it not a fact that this was not your first employment in a textile mill?

(The witness conferred with her counsel.)

Mrs. COLE. Is that your question?

Mr. JACKSON. Yes. Had you previously been employed in a textile mill?

Mrs. COLE. I think I already stated that.

Mr. JACKSON. However, on your application you state that you knew nothing of working in a textile mill. What was the purpose for covering up your previous employment?

(The witness conferred with her counsel.)

Mrs. COLE. Honestly, I don't remember.

Mr. JACKSON. I think that if there was any question in the mind of anyone respecting Mr. Penha's testimony as to the extent of the web of Communist infiltration, the deliberate effort to infiltrate, no more characteristic case could be brought to the attention of the people here, or anywhere else in the United States, than that of the witness this morning.

That is all I have, Mr. Chairman.

Mr. WILLIS. I might say this: that she feigned lack of knowledge on the definition of a colonizer. Judging from our experience in the past and similar testimony we have gathered in these hearings, she certainly typifies what is commonly known as a colonizer, if she doesn't know what a colonizer is.

Any questions?

Mr. TUCK. I have none.

Mr. WILLIS. The witness is excused.

Mrs. COLE. I resent those last remarks. I am a respected person in the community, married into an old textile family, and because my academic education seems to be something, is it impossible for a textile worker to be educated?

Mr. WILLIS. Not at all. Not at all.

Mrs. COLE. I think that is the whole point here.

Mr. WILLIS. I was a farm boy. I am proud of it.

Mrs. COLE. You might say—

Mr. WILLIS. But I answer questions about communism.

Mr. JACKSON. May I say the only unique thing about it is when an agent of the FBI in the Communist Party testifies that, in addition to being well educated, in addition to being related to an old textile family, and in addition to liking the work, you are also a colonizer for the Communist Party. That is what we are interested in.

Mr. FORER. Mr. JACKSON, I thought you were conducting an investigation for the purpose of getting information for legislation.

Mr. WILLIS. Counsel knows the rules.

Mr. FORER. And not making speeches against my client here.

Mr. WILLIS. The committee will stand in recess until 2 o'clock.

(Committee members present: Representatives Willis, Tuck, and Jackson.)

(Whereupon, at 12 noon, the subcommittee recessed to reconvene at 2 p. m. the same day.)

AFTERNOON SESSION, WEDNESDAY, JULY 30, 1958

Mr. WILLIS. The subcommittee will please come to order.

(Subcommittee members present: Representatives Willis, Tuck, and Jackson.)

Mr. WILLIS. Counsel, will you call your next witness?

Mr. ARENS. William Robertson, please come forward. Please remain standing while the chairman administers an oath to you.

Mr. WILLIS. Please raise your right hand.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROBERTSON. I do.

TESTIMONY OF WILLIAM JOSEPH ROBERTSON III, ACCOMPANIED BY COUNSEL, JOSEPH FORER

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. ROBERTSON. My name is William Joseph Robertson III. I live at 1439 North Hutchinson Street, Chicago, Ill., and I am a writer.

Mr. ARENS. You are appearing here today, Mr. Robertson, in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. ROBERTSON. Yes, sir; I am.

Mr. ARENS. And you are represented by counsel?

Mr. ROBERTSON. Yes, sir.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. FORER. Joseph Forer, Washington, D. C.

Mr. ARENS. Where are you employed?

Mr. ROBERTSON. Book Production Industries, Incorporated, Chicago, Illinois.

Mr. ARENS. Give us just a word of description of the nature of the Book Production Industries.

Mr. ROBERTSON. Well, sir, I write scientific articles.

Mr. ARENS. Where and when were you born?

Mr. ROBERTSON. Richmond, Virginia, June 24, 1922.

Mr. ARENS. And a word about your education, please, sir.

Mr. ROBERTSON. I am a graduate of the University of North Carolina.

Mr. ARENS. When did you graduate?

Mr. ROBERTSON. In 1948.

Mr. ARENS. Did that complete your formal education?

Mr. ROBERTSON. I took some graduate courses after I received my degree.

Mr. ARENS. Where?

Mr. ROBERTSON. At the University of North Carolina.

Mr. ARENS. When did you complete your graduate courses?

Mr. ROBERTSON. In the summer of 1949.

Mr. ARENS. And what courses did you pursue?

Mr. ROBERTSON. English and history.

Mr. ARENS. Were you then a resident of North Carolina?

Mr. ROBERTSON. Yes, sir, I was.

Mr. ARENS. When did you move from Virginia?

(The witness conferred with his counsel.)

Mr. ROBERTSON. I attended Washington and Lee University in Lexington, Virginia, for 2 years before entering the United States Army. I enlisted in the United States Army. After serving for over

3 years, in 1945 I was honorably discharged and returned to my family, which at that time was living in Savannah, Georgia. From there I entered the University of North Carolina. I trust that that will satisfy.

Mr. ARENS. Did you have a commission in the United States Army?

Mr. ROBERTSON. No, sir, I did not.

Mr. ARENS. Where did you serve?

Mr. ROBERTSON. I served in Australia, New Guinea, and the Philippines Islands.

Mr. ARENS. What was your first principal employment after you concluded your formal education?

Mr. ROBERTSON. I would say my first principal employment, of which I am very, very proud, was that of a union organizer with the Food, Tobacco, and Agricultural Workers in Winston-Salem, North Carolina.

Mr. ARENS. And where did you organize for the Food, Tobacco, and Agricultural Workers in Winston-Salem? What plants, please, sir?

Mr. ROBERTSON. R. J. Reynolds, Camel Cigarettes.

Mr. ARENS. Who was your immediate superior?

Mr. ROBERTSON. I actually forget the name.

Mr. ARENS. Over what period of time did you engage in this activity, please, sir?

Mr. ROBERTSON. Oh, for approximately 4 or 5 months.

Mr. ARENS. And your next principal employment, please, sir?

Mr. ROBERTSON. My next principal employment was with the Virginia-Carolina Chemical Corporation of Durham, North Carolina.

Mr. ARENS. How long did that employment last?

Mr. ROBERTSON. About 2 months, very rough work.

Mr. ARENS. And your next employment, please, sir?

Mr. ROBERTSON. Golden Belt Cotton Mill, a subsidiary of the American Tobacco trust.

Mr. ARENS. Where?

Mr. ROBERTSON. Durham, North Carolina.

Mr. ARENS. And in what capacity?

Mr. ROBERTSON. As a sweeper.

Mr. ARENS. How long?

Mr. ROBERTSON. In the carding department, the dirtiest department in the mill.

Mr. ARENS. How long did that employment last?

Mr. ROBERTSON. For approximately 3 years.

Mr. ARENS. And your next employment, please?

Mr. ROBERTSON. Sheet metal worker.

Mr. ARENS. And when did that employment begin?

Mr. ROBERTSON. That began within a month after leaving the Golden Belt Cotton Mill.

Mr. ARENS. Where?

Mr. ROBERTSON. I do not remember exactly the name. I believe it was a Carolina air-conditioning corporation. I am not—

Mr. ARENS. How long did that employment last?

Mr. ROBERTSON. Oh, about 4 or 5 months.

Mr. ARENS. And your next employment?

Mr. ROBERTSON. I worked for the Laws Sign Company.

Mr. ARENS. Where?

Mr. ROBERTSON. In Durham, North Carolina, and surrounding areas.

Mr. ARENS. In what capacity?

Mr. ROBERTSON. Assistant in putting up neon signs and taking down neon signs.

Mr. ARENS. How long did that last?

Mr. ROBERTSON. That lasted about a month or so.

Mr. ARENS. And your next employment?

Mr. ROBERTSON. I worked at the Cone Mills.

Mr. ARENS. Where?

Mr. ROBERTSON. In Greensboro, North Carolina.

Mr. ARENS. In what capacity?

Mr. ROBERTSON. As a bobbin boy.

Mr. ARENS. How long?

Mr. ROBERTSON. About 2 months. These are estimates, you understand. I may be incorrect about the exact time.

Mr. ARENS. And your next employment?

Mr. ROBERTSON. In Chicago, Illinois.

Mr. ARENS. In what capacity?

Mr. ROBERTSON. I had 2 capacities there. One was as a—just a moment.

(The witness conferred with his counsel.)

Mr. ROBERTSON. Well, I worked there in 2 capacities. I worked in putting materials together, rubber materials together, to use in steel mills and I also worked as a rubber grinder.

Mr. ARENS. Where?

Mr. ROBERTSON. This was—there again the name of the plant I do not recollect. Perhaps you gentlemen—

Mr. ARENS. What year was it, please, sir?

Mr. ROBERTSON. This was 1955.

Mr. ARENS. All right, sir. And your next employment?

Mr. ROBERTSON. My next employment was at Augustana Hospital.

Mr. ARENS. Where?

Mr. ROBERTSON. Augustana Hospital in Chicago, Illinois.

Mr. ARENS. For what period of time were you employed there and in what capacity, please, sir?

Mr. ROBERTSON. Oh, 6 weeks to 2 months. I was an orderly in a surgical ward.

Mr. ARENS. And your next employment?

Mr. ROBERTSON. Popular Mechanics Magazine.

Mr. ARENS. Where?

Mr. ROBERTSON. Chicago, Illinois.

Mr. ARENS. How long did that employment endure?

Mr. ROBERTSON. Approximately 9 months.

Mr. ARENS. And what did you do there?

Mr. ROBERTSON. I served as a messenger boy and then I served in the Bureau of Information, helping to answer queries from readers of Popular Mechanics Magazine on various subjects.

Mr. ARENS. And your next employment, please, sir?

Mr. ROBERTSON. I worked for Cargill, Incorporated, a grain exchange on South LaSalle Street in Chicago.

Mr. ARENS. In what capacity?

Mr. ROBERTSON. As a supervisor in the telegraph room.

Mr. ARENS. Your next employment?

Mr. ROBERTSON. Book Production Industries, Incorporated.

Mr. ARENS. Did you ever make application for employment at Erwin Mills?

Mr. ROBERTSON. Yes, sir, I have.

Mr. ARENS. When did you make that application for employment? (The witness conferred with his counsel.)

Mr. ROBERTSON. I don't remember exactly but I believe it was in the fall of 1954.

Mr. ARENS. Would it have been the fall of 1955?

Mr. ROBERTSON. Wait a minute. My dates are mixed up. This is 1958. It may have been the fall of 1955. That would have changed some of these dates, by the way.

Mr. ARENS. We understand. You are just relying on your best recollection on these dates.

Mr. ROBERTSON. That is right.

Mr. ARENS. And all of us are a little fuzzy sometimes on dates.

Mr. ROBERTSON. That is right.

Mr. ARENS. I should like to display to you, if you please, sir, a reproduction of an application form of the Erwin Mills, Incorporated, entitled "application for employment" dated 11-21-55, full name William Joseph Robertson, Jr.

Kindly look at that application form and tell this committee whether or not that is a true and correct reproduction of the application form filed by yourself with the Erwin Mills at Durham, North Carolina.

(The witness conferred with his counsel.)

Mr. ROBERTSON. Yes, sir, that looks familiar.

Mr. ARENS. Kindly look under that section of the application where educational background is alluded to—education.

(The witness conferred with his counsel.)

Mr. ARENS. Did you put on the application form the truth, the full truth, respecting your educational background?

(The witness conferred with his counsel.)

Mr. ROBERTSON. Well, cotton-mill owners don't like their employees to be too well educated. It makes it difficult for them. So, knowing this situation in the minds of the employers, naturally I wasn't going to make it more difficult for myself to get a job.

Mr. ARENS. Kindly answer the question. Did you tell your prospective employers the truth and the whole truth, respecting your educational background?

Mr. ROBERTSON. Of course not. I was a worker looking for a job.

Mr. ARENS. Thank you, sir.

(Document marked "Robertson Exhibit No. 1" and retained in committee files.)

Mr. ARENS. When you worked at the Cone Mills did you happen to know a lady by the name of Madge Spurny Cole?

(The witness conferred with his counsel.)

Mr. ROBERTSON. This question appears to be the sort of question that the Watkins decision had in mind. The Watkins decision was directed against the Un-American Activities Committee hearing.

Mr. ARENS. Kindly answer the question. When you were working at the Cone Mills in North Carolina, did you know a person by the name of Madge Spurny or Madge Spurny Cole, as her married name presently is?

Mr. ROBERTSON. This question is in violation of my rights under Article I of the Bill of Rights.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the witness be ordered and directed to answer the question; and as a foundation I want now to explain to the witness, as I have done before for other witnesses, the pertinency of the question and its relevancy.

This committee is undertaking to develop factual information respecting the administration and operation of certain anti-Communist legislation which is on the books and to assemble information which will enable it to appraise legislative proposals pending before it.

Among those legislative proposals is H. R. 9937, a series of suggestions, prospective provisions of the law to cope with Communists and Communist activities.

Madge Spurny was interrogated this morning by this committee. She had been identified yesterday by a live responsible witness under oath as a person known to have been a member of the Communist Party. You, sir, have likewise been identified as a Communist and as a Communist colonizer.

This committee is here in Atlanta for the purpose of developing factual information respecting Communist techniques, principally Communist techniques and colonization in the South.

If you will tell us whether or not you know, or did know, Madge Spurny at the Cone Mills, I then propose to pursue the subject matter further by interrogating you with respect to Madge Spurny's activities, as current as possible, as a Communist colonizer, if you possess such information; so that that information will then be available to the Committee on Un-American Activities in its appraisal of pending legislation and in its appraisal of the operation and administration of the existing security laws.

Now, sir, kindly answer the question. When you were engaged in Cone Mills did you know a person by the name of Madge Spurny?

Mr. ROBERTSON. Sir, that question is in violation of my rights under Article I of the Bill of Rights as reinforced by the Watkins decision. In addition, it has no relevance to any legitimate legislation; and, furthermore, I wish to utilize my rights under Article V of the Bill of Rights as reinforced by the Watkins decision.

Mr. ARENS. Which provision of Article V of the Bill of Rights are you invoking?

(The witness conferred with his counsel.)

Mr. ROBERTSON. My privilege not to be a witness against myself.

Mr. ARENS. Do you honestly apprehend, sir, that if you told this committee truthfully, while you were under oath, whether or not you knew Madge Spurny while you were employed at the Cone Mills, you would be supplying information which might be used against you in a criminal proceeding?

(The witness conferred with his counsel.)

Mr. ROBERTSON. It is possible.

Mr. ARENS. Do you know a person, or have you known a person, by the name of Charles Childs?

(The witness conferred with his counsel.)

Mr. ROBERTSON. I refuse to answer that question on the same grounds, as being in violation of Article I of the Bill of Rights, which provides freedom of speech and assembly and association.

Mr. ARENS. Are you invoking those provisions of—

Mr. ROBERTSON. And furthermore I wish to emphasize to this committee that these rights and the Bill of Rights have been emphasized by the Watkins decision.

The Watkins decision deals precisely with the activities of this committee and it is emphasized very strongly the manner in which this committee has carried on its investigations as being in violation of the Constitution of the United States of America.

Mr. ARENS. Of course you are in error in your appraisal of the Watkins case and in the status and activities of this committee. We are letting you unwind this way because that is the typical Commie line, and we are glad to listen to it, because we hear it numerous times.

Mr. ROBERTSON. Is it typical Communist line, sir, to defend the Constitution of America?

Mr. ARENS. Are you, sir, this moment, a member of the conspiratorial organization which has as its ultimate objective the overthrow of the Constitution of the United States?

(The witness conferred with his counsel.)

Mr. ROBERTSON. Of course not. I am a loyal American.

Mr. ARENS. Are you now, this moment, a member of the Communist Party?

Mr. ROBERTSON. I am a loyal American. My people have been colonizers—you like this word so much—they have been colonizers from the very beginning and foundation of this country.

Mr. ARENS. Tell this committee while you are under oath, are you now a member of the Communist Party?

Mr. ROBERTSON. I am a loyal American.

Mr. ARENS. Mr. Chairman—

Mr. ROBERTSON. I love my country.

Mr. ARENS. Mr. Chairman, I respectfully suggest the witness be ordered and directed to answer the question whether or not he is now a member of the Communist Party, or else invoke his rights under the fifth amendment not to give information against himself that could be used against him in a criminal proceeding.

Mr. ROBERTSON. I wish to invoke my rights under the various articles of the Bill of Rights, including the first amendment and the fifth amendment.

Mr. ARENS. A former undercover agent of the FBI, Mr. Armando Penha, testified that you were not just a colonizer, coming on the *Mayflower*, or a descendant of those who came on the *Mayflower* as colonizers, but that you were a Communist colonizer.

Mr. ROBERTSON. Don't speak so loud, sir. It is intimidating.

Mr. ARENS. I beg your pardon. I don't want to intimidate you.

Mr. ROBERTSON. I think these whole proceedings are an intimidation to all witnesses.

Mr. ARENS. Your use of the word intimidation has reached the point of exasperation, which I think any loyal red-blooded American might well appreciate.

Now, sir, Mr. Penha, a former undercover agent of the FBI, testified before this committee, laid his liberty on the line, and said while he was an undercover agent of the FBI in the Communist conspiracy he knew you as a Communist colonizer, active in colonizing in the South.

We would like to give you now an opportunity, while you are under oath, in view of your assertion of your patriotism and your loyalty to this country, to deny that while you are under oath.

(The witness conferred with his counsel.)

Mr. ARENS. Do you as one who has asserted his patriotism and loyalty, care to stand up like a red-blooded American and deny that you are, or have been in the recent past, a Communist colonizer?

(The witness conferred with his counsel.)

Mr. ROBERTSON: No, sir; I don't care to. I am a loyal American.

Mr. ARENS. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

Mr. WILLIS. Are there any questions?

Mr. TUCK. I have no questions.

Mr. JACKSON. I have no questions, Mr. Chairman.

Mr. WILLIS. The witness will be excused.

Call your next witness.

Mr. ARENS. The next witness, if you please, Mr. Chairman, will be William Matthews.

• Kindly come forward.

Mr. WILLIS. Please raise your right hand.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MATTHEWS. I do.

TESTIMONY OF WILLIAM MATTHEWS

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. MATTHEWS. My name is William Matthews, and I live at 2082 Union Street in Brooklyn, New York, and I work for a camera manufacturer.

Mr. ARENS. You are appearing today in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. MATTHEWS. That is true.

Mr. ARENS. You do not have counsel?

Mr. MATTHEWS. I do not.

Mr. ARENS. You understand under the rules of this committee you have the privilege of counsel?

Mr. MATTHEWS. I can't afford it.

Mr. ARENS. We shall advise you as we proceed of your constitutional rights, sir.

Mr. MATTHEWS. Thank you.

Mr. ARENS. Do you want counsel?

Mr. MATTHEWS. If the committee will pay for counsel, I would like to have counsel.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the committee consider a recess of this particular witness' interrogation until tomorrow, with a request to the local Bar Association that one of their number volunteer his services, as a service to the Committee on Un-American Activities in our cause, to consult with this young man and advise him of his constitutional rights and that the subpoena of this

witness, or his appearance pursuant to the subpoena, be carried forward until tomorrow morning.

Mr. TUCK. I move that that suggestion be followed, Mr. Chairman.

Mr. JACKSON. I think it is an excellent suggestion, Mr. Chairman.

Mr. WILLIS. The suggestion is very willingly accorded.

Mr. ARENS. I personally would have to say I don't know just how to proceed from here, Mr. Chairman. It is the first time I have had the pleasure of visiting in Atlanta, and I assume the other members of the committee are in about the same situation, but we will try our best in the course of the next few hours to contact the local Bar Association and undertake to solicit from them the designation of a reputable lawyer to confer with this young man and to sit with him tomorrow if he so desires.

Mr. WILLIS. That will be done.

Mr. MATTHEWS. Thank you.

Mr. ARENS. Are you ready, Mr. Chairman, for the next witness?

Mr. WILLIS. Yes.

Mr. ARENS. The next witness, if you please, Mr. Chairman, will be Mr. Karl Korstad.

Mr. WILLIS. Please raise your right hand.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KORSTAD. I do.

Mr. ARENS. Mr. Chairman, may I make a comment or observation with respect to the ruling of the Chair and the committee a moment ago?

The young man who was just sworn a few moments ago, William Matthews, will stay in touch with Mr. Frank Bonora here, of this staff. We are already in process of trying to contact the local Bar Association. If he will let Mr. Bonora, seated at my right, know of his availability, I am reasonably sure, hopefully sure, at least, a lawyer will be made available to him.

Mr. WILLIS. Do you understand that, young man?

Mr. MATTHEWS. Yes, sir.

TESTIMONY OF KARL R. KORSTAD, ACCOMPANIED BY COUNSEL, JOSEPH FORER

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. KORSTAD. My name is Karl Korstad. I live at 5000 High Point Road, Greensboro, North Carolina. I own and operate a landscape gardening business there.

Mr. ARENS. You are appearing today, Mr. Korstad, in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. KORSTAD. Yes, I am.

Mr. ARENS. You are represented by counsel?

Mr. KORSTAD. Yes, I am.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. FORER. Joseph Forer, Washington, D. C.

Mr. ARENS. Would you kindly spell your name for us, Mr. Korstad?

Mr. KORSTAD. Glad to. First name is Karl, K-a-r-l, not "C." You spell it with a "K." Middle initial, "R." Please use that. And the last name is Korstad, K-o-r-s-t-a-d.

Mr. ARENS. When and where were you born?

Mr. KORSTAD. In Deep River Falls, Minnesota, May 19, 1915.

Mr. ARENS. And a word about your education, please, sir.

Mr. KORSTAD. I graduated from high school in 1931. I went to Concordia College, Moorhead, Minnesota, graduated with an A. B. in 1935. I taught high school for 2 years. I went to Syracuse, took a Master's in English there in 1937—1938, I guess it was.

Mr. ARENS. Where was the Master's in English, please?

Mr. KORSTAD. In Syracuse University, in the English Department. I taught at the University until June of 1942, when I was drafted into the Army. I served in the service for three and a half years, in the Army Medical Corps, doing public relations and special service work in a general hospital.

Mr. ARENS. Where?

Mr. KORSTAD. In Charleston, South Carolina.

Mr. ARENS. And after your discharge from the Army, please tell us of your occupations.

Mr. KORSTAD. I went to work for the Food and Tobacco Workers Union.

Mr. ARENS. Where, please, sir?

Mr. KORSTAD. First in Washington.

Mr. ARENS. Washington, D. C.?

Mr. KORSTAD. Yes, sir. I organized a committee there to raise funds for a group of women who were members of that union who were on a strike in Charleston.

Mr. ARENS. Excuse me a moment, please, sir.

Mr. KORSTAD. Yes, sir.

Mr. ARENS. What was your job with the Food and Tobacco Workers in Washington?

Mr. KORSTAD. That is what I was telling you. That is what I was telling you.

Mr. ARENS. Proceed. I beg your pardon. I didn't understand you.

Mr. KORSTAD. I helped organize a committee there, which was made up of Congressmen, Senators, and other people, to help raise funds for a group of women who were on strike.

Mr. ARENS. What year was that?

Mr. KORSTAD. That was in—

Mr. ARENS. Was it '46?

Mr. KORSTAD. '45 or '46. I am not exactly sure.

Mr. ARENS. Were you then an employee of the Food and Tobacco group?

Mr. KORSTAD. They asked me if I would do this and they offered to pay my expenses if I would.

Mr. ARENS. Who are "they"?

Mr. KORSTAD. The leaders of the union, people who worked in the union.

Mr. ARENS. Who? Who was your—

Mr. KORSTAD. I think the man's name was Larry Larson. I think he was an organizer for the union. In that particular situation he talked to me about it.

Mr. ARENS. Did you know him before?

Mr. KORSTAD. No. I was interested in them when I was in the Army in Charleston. They had gone on strike. I was interested. I was interested in them as the newspaper—

Mr. ARENS. How long did you work in promoting this enterprise in Washington, D. C.?

Mr. KORSTAD. Until the strike was over; about 2 months.

Mr. ARENS. When was that?

Mr. KORSTAD. About 2 months.

Mr. ARENS. And your next employment?

Mr. KORSTAD. I went to work for the union. I was working for that union until 1951.

Mr. ARENS. In what capacity?

Mr. KORSTAD. I worked as business agent. I worked as regional director of the union and worked as an organizer.

Mr. ARENS. Where were the various assignments that you discharged?

Mr. KORSTAD. I worked in Memphis, Tennessee, as business agent. I worked in Raleigh as a regional director covering all of the southeastern States except Georgia. And I worked in Winston-Salem helping on about a 3-year organizing drive, an unsuccessful one, against the R. J. Reynolds Tobacco Company.

Mr. ARENS. When were your services with the Food and Tobacco Workers terminated?

Mr. KORSTAD. In, I think, about November of 1951. The union actually went out of existence. It no longer exists.

Mr. ARENS. And the next employment you had then?

Mr. KORSTAD. I organized the present business that I now operate. I have been there since, for 7 or 8 years, whatever amount of time that is.

Mr. ARENS. Do you know a man by the name of Armando Penha?

(The witness conferred with his counsel.)

Mr. KORSTAD. I am going to have to refuse to answer that question on the basis of my rights under the first amendment and the privilege under the fifth against self-incrimination.

Mr. ARENS. Do you honestly apprehend if you told this committee truthfully, while you are under oath, whether or not you know Armando Penha you would be supplying information which might be used against you in a criminal proceeding?

(The witness conferred with his counsel.)

Mr. KORSTAD. It is possible; yes, sir.

Mr. ARENS. Are you now, or have you ever been, a member of the Communist Party?

Mr. KORSTAD. I am going to have to refuse to answer that under the same basis.

Mr. ARENS. Are you now a member of the Communist Party?

Mr. KORSTAD. I will have to use the same basis.

Mr. ARENS. In 1950 were you living in Chicago?

(The witness conferred with his counsel.)

Mr. KORSTAD. No, sir. I have never lived in Chicago. I might have stayed there a night or two going back home.

Mr. ARENS. Do you recall a National Labor Conference for Peace, urging withdrawal of United States troops from Korea which was held in Chicago in July of 1950?

Mr. KORSTAD. I seem to recall that there was such a conference.

Mr. ARENS. Were you a participant in the conference?

(The witness conferred with his counsel.)

Mr. KORSTAD. I didn't participate in the conference. I wasn't there.

Mr. ARENS. I beg your pardon?

Mr. KORSTAD. I was not at that conference.

Mr. ARENS. Did you lend your name and your prestige in the labor movement to the Conference for Peace, urging the withdrawal of United States troops from Korea?

(The witness conferred with his counsel.)

Mr. KORSTAD. I may have. I was working in the union. Many things came across my desk.

Mr. ARENS. Were you a member of the Communist Party at the time you loaned your name and your prestige and your stature in this labor organization to this Conference for Peace, urging the withdrawal of United States troops from Korea?

Mr. KORSTAD. I am going to have to refuse to answer that question.

Mr. ARENS. You are not under any compulsion to refuse, you understand, sir.

Mr. KORSTAD. On the same grounds.

Mr. ARENS. Do you refuse?

Mr. KORSTAD. I refuse.

Mr. ARENS. Why?

Mr. KORSTAD. On the grounds I already stated.

Mr. ARENS. Do you honestly apprehend if you told this committee truthfully whether or not you were a Communist when you were lending your name, your prestige, and your status in this labor organization to this drive to cause the withdrawal of United States troops from Korea, you would be supplying information which might be used against you in a criminal proceeding?

(The witness conferred with his counsel.)

Mr. KORSTAD. It is possible, yes.

Mr. ARENS. While you were one of these organizers did you lend your name, your prestige, and your status in the labor organization in attacks against the House Committee on Un-American Activities?

Mr. KORSTAD. What date is that, please, sir? Do you have a date on that?

Mr. ARENS. I have in my hand a thermofax reproduction of the Communist Daily Worker of Sunday, May 25, 1947, listing names of a number of people who are alleging witch hunts, fascism, Red baiting and the like of this committee as alleged by the conspiracy, all endorsing this warning against this committee, including one Karl Korstad of the Food and Tobacco Workers Union of Memphis. Does that refresh your recollection?

(The witness conferred with his counsel.)

Mr. KORSTAD. Personally, I don't remember. I could have.

Mr. ARENS. You could have.

Mr. KORSTAD. It is possible. I don't remember.

(Document marked "Korstad Exhibit No. 1," and retained in committee files.)

Mr. ARENS. Were you a member of the Civil Rights Congress?
(The witness conferred with his counsel.)

Mr. KORSTAD. Sir, I refuse to answer the question on the previous basis.

Mr. ARENS. Do you recall when the 11 or 12 traitors were tried in New York City before Judge Medina? Do you recall that?

Mr. KORSTAD. I read the papers.

Mr. ARENS. Do you recall it?

Mr. KORSTAD. I recall the news. I don't recall any headlines like that.

Mr. ARENS. Do you recall any headlines in which your name appeared under an article asking that the 11 traitors be freed?

(The witness conferred with his counsel.)

Mr. KORSTAD. What were those people charged for, treason? Is that the charge that was against them?

Mr. ARENS. You said you recalled it. I don't want to quibble with you. Your counsel is trying to get me to say here that was not treason. It was traitorous acts under the Smith Act, and he knows it, as well as you do.

Tell us if you have a recollection, if you please, sir? Tell us if you have a recollection of lending your name, your prestige, and your status in this labor organization on behalf of the 11 Communists who were being tried, or had been tried, before Judge Medina in Foley Square in New York?

(The witness conferred with his counsel.)

Mr. KORSTAD. I don't recall it; I may have. I honestly don't recall that.

Mr. ARENS. Armando Penha testified yesterday, among other things, that while he was in the Communist Party at the behest of the Federal Bureau of Investigation to serve his Government he knew you in the apparatus as a colonizer. Was he in error in that testimony? I am not quoting him but giving the essence of it. Was he in error on that?

(The witness conferred with his counsel.)

Mr. KORSTAD. Would it be helpful in answering the question if I told you honestly how I happen to be working where I am now and why I happened to work—

Mr. ARENS. We don't want quibbling.

Mr. KORSTAD. I am not trying to.

Mr. ARENS. We want you to tell us: Have you been a Communist Party colonizer?

(The witness conferred with his counsel.)

Mr. KORSTAD. I don't know how—you phrase the question, you see, in such a way that you make it almost impossible for a person to give an honest answer.

Mr. ARENS. Just tell us honestly and simply: Are you now—we will start with that and then we will go on from there—are you now, this minute, a member of the Communist Party?

Mr. KORSTAD. I refuse to answer on the ground previously stated.

Mr. ARENS. Mr. Penha said he knew you as a Communist. Why don't you deny it now while you have an opportunity while you are under oath?

(The witness conferred with his counsel.)

Mr. KORSTAD. I choose to use my constitutional rights under the first and fifth amendment.

Mr. ARENS. Were you a member of the High Point Industrial Commission in North Carolina in 1955?

(The witness conferred with his counsel.)

Mr. KORSTAD. I refuse on the same basis.

Mr. ARENS. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

Mr. JACKSON. Mr. Chairman, I gathered the impression that the witness desired to say something in explanation. In spite of his having availed himself of the privilege under the Constitution, I feel that if there is any matter in extenuation or matter of explanation that he cares to make, perhaps we should hear him.

Mr. WILLIS. I think it would be a splendid idea if he would really speak freely about all he knows.

Mr. JACKSON. I am not that hopeful, Mr. Chairman. But I thought perhaps there might be something which he wanted to say which we should, in all justice, let him say.

Mr. KORSTAD. The reason—what I wanted to explain: The reason I came into the South was that I was drafted in the Army and sent in the South. I stayed in one post in the South. I married a Southern girl—there were thousands of us—and I settled in the South where my wife's family was. I went to work for this particular union—I don't think—because I was interested in the strike situation. I continued to work for them.

Mr. JACKSON. Were you a member of the Communist Party while you were doing all of this?

Mr. KORSTAD. I must refuse to answer. I refuse to answer those questions on the basis I have already given.

Mr. JACKSON. Why?

Mr. KORSTAD. On the basis of my rights under the first and privilege under the fifth not to give self-incrimination.

Mr. ARENS. Let us take a recess, Mr. Chairman.

Mr. JACKSON. Mr. Chairman, I wish to make one observation, perhaps gratuitously.

I have been impressed by the fact that the present witness has not carried the militant injunctions of the Communist Party to disrupt into this hearing room. We have seen enough of that during the years the committee has operated. I do not know what recent information, more recent than was developed by the witness Mr. Penha, the committee has. However, I have a feeling that one with the war record of the previous witness might and should give consideration to a continuing obligation which he has to his country.

I would hope that on sober reflection some time in the future the witness would see that obligation, as we believe it exists, and give the committee the benefit of whatever information he may have. He has been a courteous witness, which is quite unusual.

Mr. WILLIS. The committee will stand in formal recess for 10 minutes.

(Subcommittee members present: Representatives Willis, Tuck, and Jackson.)

(Brief recess.)

Mr. WILLIS. The subcommittee will please come to order.

(Subcommittee members present: Representatives Willis, Tuck, and Jackson.)

Mr. WILLIS. Counsel, please call your next witness.

Mr. ARENS. Jerome Van Camp, kindly come forward.

Mr. WILLIS. Please raise your right hand.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VAN CAMP. I do.

TESTIMONY OF JEROME VAN CAMP, ACCOMPANIED BY COUNSEL, JOSEPH FORER

Mr. ARENS. Please identify yourself by name, residence, and occupation.

Mr. VAN CAMP. My name is Jerome Van Camp. I work at a number of jobs.

Mr. ARENS. Would it be convenient for you to raise your voice?

Mr. VAN CAMP. I have worked at a number of jobs, no particular occupation, even though I am a qualified weaver.

Mr. WILLIS. Qualified?

Mr. ARENS. I didn't get the last. You are a qualified what, sir?

Mr. VAN CAMP. I am a qualified weaver.

Mr. ARENS. And your residence, please?

Mr. VAN CAMP. Philadelphia, Pennsylvania.

Mr. ARENS. Where?

Mr. VAN CAMP. 2615 North Mutter Street.

Mr. ARENS. You are appearing today in response to a subpoena which was served upon you by the House Committee on Un-American Activities?

Mr. VAN CAMP. Yes, sir.

Mr. ARENS. And you are represented by counsel?

Mr. VAN CAMP. Yes, sir.

Mr. ARENS. Counsel, please identify yourself on this record.

Mr. FORER. Joseph Forer, Washington, D. C.

Mr. ARENS. Where and when were you born?

Mr. VAN CAMP. I was born in Southern Pines, North Carolina.

Mr. ARENS. Would it be convenient for you to raise your voice?

Mr. VAN CAMP. I was born in Southern Pines, North Carolina, in 1933, May 14.

Mr. ARENS. Please tell us about your education.

Mr. VAN CAMP. I went to grammar school in Southern Pines. I went to high school in Southern Pines and I attended the University of North Carolina for two and a half years.

Mr. ARENS. When did you complete your study at the University of North Carolina?

Mr. VAN CAMP. I think it was 1954.

Mr. ARENS. Now tell us, if you please, sir, what your first principal employment was after you completed your formal education?

Mr. VAN CAMP. I was working during my education.

Mr. ARENS. Where?

Mr. VAN CAMP. Erwin Mills.

Mr. ARENS. Where are the Erwin Mills located?

Mr. VAN CAMP. In Durham, North Carolina.

Mr. ARENS. In what capacity were you working there?

Mr. VAN CAMP. I worked there one time as a spare hand and then I learned to weave there.

Mr. ARENS. How long did you work there?

Mr. VAN CAMP. A total of 2 years.

Mr. ARENS. That would get us up to about 1956, is that correct?

Mr. VAN CAMP. No. I stopped working there twice to go back to school, and each time I would be reemployed at Erwin Mills.

Mr. ARENS. When did you finally conclude your employment activities at Erwin Mills?

Mr. VAN CAMP. May 5, 1955.

Mr. ARENS. All right, sir. Now, your next employment, please, sir.

Mr. VAN CAMP. I worked for a plumbing contractor for a few weeks.

Mr. ARENS. Where, please, sir?

Mr. VAN CAMP. I worked for a plumbing contractor.

Mr. ARENS. Where?

Mr. VAN CAMP. In Chapel Hill, North Carolina, for a few weeks.

Mr. ARENS. And your next employment?

Mr. VAN CAMP. I worked for the Alexander Motor Company in Durham, which is 8 miles from there.

Mr. ARENS. How long did that employment last?

Mr. VAN CAMP. Two months.

Mr. ARENS. And your next employment, please, sir?

Mr. VAN CAMP. Carpenter Motor Company.

Mr. ARENS. Where?

Mr. VAN CAMP. In Durham.

Mr. ARENS. In what capacity?

Mr. VAN CAMP. As a mechanic's helper.

Mr. ARENS. And your next employment?

Mr. VAN CAMP. Just a minute. I went to New York that summer, 1956, and stayed there for about a month. I had a job there for the sheet metal company and then I returned to North Carolina.

Mr. ARENS. Just go on, if you please, sir, and tell us your next employments in sequence.

Mr. VAN CAMP. I received a draft notice while I was in New York and came home to answer it, and I was unemployed during that period, and I was declared 4-F.

(The witness conferred with his counsel.)

Mr. ARENS. Go right ahead, please, sir.

Mr. VAN CAMP. I live with my relatives, who moved to Philadelphia at that time, and when I got in Philadelphia I worked for the Northeast Auto Sales. That was in the fall of 1956.

Mr. ARENS. And your next employment?

Mr. VAN CAMP. The Philadelphia Inquirer.

Mr. ARENS. The Philadelphia Inquirer?

Mr. VAN CAMP. Yes.

Mr. ARENS. In what capacity?

Mr. VAN CAMP. As a copy boy.

Mr. ARENS. All right, sir. Tell us your next employments as they come along, please, sir.

Mr. VAN CAMP. And my present job I now work at was the next one which is Kar-nu Company.

Mr. ARENS. I didn't get that.

Mr. VAN CAMP. The Kar-nu Co. They service Bell Telephone trucks, a subcontractor. I quit that job to come down here several days ago.

Mr. ARENS. Do you propose to take up residence again here in the South?

Mr. VAN CAMP. I quit to come to Atlanta. I don't intend to stay here.

Mr. ARENS. Young man, did you get hooked up with the Communist operation in the University of North Carolina at any time?

Mr. VAN CAMP. I refuse to answer that question on the basis of the first amendment, under my protection of the fifth amendment not to be a witness against myself, and I don't think it has anything to do with pending legislation.

Mr. ARENS. Do you know a man by the name of Armando Penha?

Mr. VAN CAMP. I refuse to answer on the same basis.

Mr. ARENS. Are you right now, today, a member of the Communist Party?

Mr. VAN CAMP. I refuse to answer on the same basis.

Mr. ARENS. Have you ever quit the Communist Party?

Mr. VAN CAMP. I refuse to answer on the same basis.

Mr. ARENS. This Committee on Un-American Activities, young man—and you still are a very young man—

Mr. VAN CAMP. Yes, sir.

Mr. ARENS. —can recommend that immunity be granted from any criminal prosecution to certain people. I would like to ask you this: If this committee should cause to be instituted proceedings to grant you immunity so that you could not be prosecuted criminally for information developed by your own testimony, and if those proceedings should be brought to a fruition in the processes prescribed by the law so that you could come clean and face your parents, face your employers, and face other citizens of this country and tell all about what you know about the Communist operation as a young man, about the Communist attempts to penetrate the industrial areas of the South, about the way Communists seize hold of the minds of young people whom they can grab up in schools and colleges and the like, would you, if you had that immunity, would you break completely with this operation and accept this immunity and tell this committee while you are under oath all you know from your personal experience about the Communist Party and the Communist operation in this country?

(The witness conferred with his counsel.)

Mr. VAN CAMP. Would you repeat that question? Was that a question or—I took it as a speech. Make it simpler, please.

Mr. WILLIS. I think he is not the material we hoped he might be.

Mr. ARENS. We hoped, young man, you might want to break from the operation and testify while you are still young, while you still have an opportunity to be of service to your country.

Mr. VAN CAMP. Is that a question?

Mr. ARENS. And, in the process, to be clean—just an observation.

Mr. VAN CAMP. Thank you.

Mr. ARENS. Mr. Chairman, I better ask one question just to clear the record.

Mr. Penha testified, sir, that while he was serving his country as an undercover agent in this operation for the FBI he knew you as a

member of the Communist Party, and he had certain information respecting colonization activities by yourself. Do you care to avail yourself now of the opportunity, while you are under oath, to publicly take issue with Mr. Penha and deny this information in so far as it is applicable to you?

(The witness conferred with his counsel.)

Mr. VAN CAMP. No, I don't care to.

Mr. ARENS. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

Mr. WILLIS. The witness is excused.

Please call your next witness.

Mr. ARENS. Hunter Pitts O'Dell, please come forward.

Mr. WILLIS. Please raise your right hand.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'DELL. I do.

TESTIMONY OF HUNTER PITTS O'DELL, ACCOMPANIED BY COUNSEL ORZELL BILLINGSLEY, JR.

Mr. ARENS. Please identify yourself by name, residence, and occupation.

Mr. O'DELL. My name is Hunter O'Dell.

Mr. ARENS. Please identify yourself by name, residence, and occupation.

Mr. O'DELL. I will repeat. My name is Hunter O'Dell. My residence is Montgomery, Alabama.

Since this committee has earlier stated—

Mr. WILLIS. What is your occupation? That is the next question.

(The witness conferred with his counsel.)

Mr. O'DELL. Since this committee has earlier stated—

Mr. ARENS. Would you kindly state your occupation?

Mr. O'DELL. The question as to my occupation is not relevant to subversive activity.

Mr. JACKSON. Mr. Chairman, I ask that the witness be directed to answer the question.

Mr. WILLIS. Yes. You are directed to answer the question and I think you will find out—we might as well get on the right foot—that it will be so much better for you if you answer the questions direct. If you don't, you may subject yourself to special proceedings. We don't want that. That is a simple question. The question is, what is your occupation. But the choice is yours. You have that right.

(The witness conferred with his counsel.)

Mr. O'DELL. I am an insurance executive.

Mr. ARENS. I didn't hear you, please, sir.

Mr. O'DELL. I am an insurance executive.

Before we go further, I have a statement that I would like to—

Mr. ARENS. You are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. O'DELL. I am.

Mr. ARENS. And you are represented by counsel?

Mr. O'DELL. I am.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. BILLIN. Y. Orzell Billingsley, Jr., Birmingham, Alabama.

Mr. ARENS. I am not sure our reporter got that.

Mr. BILLINGSLEY. Orzell-Billingsley, Jr.

Mr. ARENS. Your first name?

Mr. BILLINGSLEY. Orzell. O-r-z-e-l-l.

Mr. ARENS. And your last name?

Mr. BILLINGSLEY. Billingsley.

Mr. ARENS. And your address, please, counsel.

Mr. BILLINGSLEY. Birmingham, Alabama.

Mr. ARENS. Where and when were you born, Mr. O'Dell?

Mr. O'DELL. Detroit, Michigan, 1923; in August.

Mr. ARENS. And a word about your education.

Mr. O'DELL. Well, I don't feel that my education is a question at hand with regard to subversive activities. Therefore I refuse to answer.

Mr. ARENS. Mr. Chairman, I respectfully suggest this witness be ordered and directed to answer the question as to his educational background.

Mr. WILLIS. You are directed to answer the question. It is a preliminary question and may well be very pertinent.

I direct you to answer that question as to your education.

(The witness conferred with his counsel.)

Mr. O'DELL. I don't think that it is pertinent and neither is it secret, but I spent 2 years in college and studied Pharmacy at Xavier University in New Orleans, Louisiana.

Mr. ARENS. Where did you take your 2 years in college?

Mr. O'DELL. I just stated that.

Mr. WILLIS. Xavier University of New Orleans, a very good school.

Mr. ARENS. Did you receive any kind of degree?

Mr. O'DELL. No.

Mr. ARENS. When did you conclude your education at Xavier University?

Mr. O'DELL. Somewhere around 1944, late '43.

Mr. ARENS. What was your first principal employment after you concluded your education at Xavier University?

Mr. O'DELL. I joined the United States Merchant Marine during the war.

Mr. ARENS. And how long did you serve in the Merchant Marine?

Mr. O'DELL. Well, it was a broken period for about 7 years. It was a period of about 2 years and then there was a period that I worked in Miami for my father, and then I went back to the Merchant Marine years later. So it ran to about 7 years altogether.

Mr. ARENS. Were you ever precluded or screened off ships in the Merchant Marine under any Government program?

(The witness conferred with his counsel.)

Mr. ARENS. Did you understand the question?

Mr. O'DELL. Yes, I understood the question.

Mr. ARENS. Would you kindly answer it?

Mr. O'DELL. And I would like to introduce a statement to this committee, if there is no objection.

Mr. ARENS. We will get to that in a moment, please. Were you ever screened off any ships by any Government security program?

Mr. O'DELL. I don't recall.

Mr. ARENS. You don't recall. Where all did you go when you were with the Merchant Marine?

Mr. O'DELL. I stated that I worked in the Merchant Marine during the war.

Mr. ARENS. Where all did you go?

Mr. O'DELL. I went all over the world.

Mr. ARENS. Did you engage in any Communist Party organizing on these ships?

Mr. O'DELL. My purpose in sailing was to be part of the war effort.

Mr. ARENS. Were you a Communist when you were a part of this war effort?

Mr. O'DELL. What is meant by a "Communist"? What do you mean by that?

Mr. ARENS. A Communist.

Mr. O'DELL. Yes.

Mr. ARENS. I will be very glad to tell you.

A Communist is a person who is part and parcel of the Communist Party, either aboveground or belowground in the United States, the Communist operation. About 100 years ago there was a German scholar, Karl Marx. He evolved a philosophy of world revolution, an atheistic, communistic program. That was given a catalytic response by Nicolai Lenin, 50 years ago, at which time he and a band of revolutionaries seized control of the government. That movement has spread over the world. It has 33,000,000 agents over the world, in a death grip with all the God-fearing people, all that God-fearing people believe in. In the United States, 25 or 30 years ago that movement got a start. It is a movement that now has enmeshed in its grip 900 million people. It is the movement that proceeds by violence and deceit and subversion to corrupt and to destroy. It is the movement within Soviet Russia itself which has, in its ascendancy, destroyed over 10 million human souls. It has at least 20 million in slave labor camps. It is a movement in Red China, according to the best advice, that has destroyed approximately 40 million souls. It is a movement that is heading toward a total war against the United States of America. It is a movement that has enlisted within the United States a fifth column, dedicated to destroy this Government; which is the last bastion of freedom of any potency to resist this movement in the world.

We understand, and we have received testimony from live witnesses under oath, responsible people, identifying you, Hunter Pitts O'Dell, as part and parcel of that movement, as a dedicated zealot of the Communist conspiracy in the United States who masquerades behind the Constitution of the United States, and would desecrate the flag of this great Nation.

That I believe is a fair start on "What is a Communist?" and "What is the Communist movement?"

And this Committee on Un-American Activities, as an arm of the Congress of the United States, is seeking to develop factual information which it can use in devising legislative enactments to protect this Nation against this conspiratorial fifth column, not a political party.

but one which masquerades behind a facade of humanitarianism and undertakes to suck into its web, the dupes, the innocent, and those who can be called within the orbit of its influence.

One Arthur Eugene testified before this committee in February, 1957, that while he was a member of this conspiracy, he knew you, Hunter Pitts O'Dell, as part and parcel of the conspiracy.

Another one-time top Communist in the South, a Dr. William Sorum, likewise identified you as a Communist. I have in my hand here now an organizational platform and program for the south—which was seized on premises which you occupied in New Orleans a year or so ago—on proposals of the Communist Party conspiracy of the South.

And I propose, if you will tell us whether or not, while you are under oath, you are now in this conspiracy of the Communist Party, to interrogate you at length with reference to plans and proposals and designs of this conspiracy which were taken from premises under your custody and control.

Now, let us proceed with making this record.

Are you now a member of the Communist Party? We will start there.

Mr. O'DELL. I am going to answer the previous question, that you asked you what is a Communist.

Mr. ARENS. Do you understand what a Communist is now?

Mr. O'DELL. No. I have been treated to a speech.

Mr. ARENS. Do you know what a Communist is?

Mr. O'DELL. Well, I will answer. I will answer the question that you raised originally. Most definitions are short. Yours seemed to have evoked a speech. You seem to know, and apparently have stated, a lot about subversive activities that began with Karl Marx and Europe and a hundred years ago.

I am wondering, do you know as much about the subversive activities in this country that began with the slavery of the Negro people, and have been going on for 300 years, including the Jim Crow system—that has been in effect since the end of the Civil War. That is what I am primarily concerned with in terms of subversive activities.

Mr. ARENS. Our primary concern at the moment is to find out from you whether or not you will tell this committee, while you are under oath, whether or not you are now, this minute, a Communist.

(At this point Representative Jackson left the hearing room.)

Mr. O'DELL. I didn't interrupt you while you were making your statement. I don't expect you to interrupt me while I am making mine.

Mr. WILLIS. You are not going to make a speech. You said you didn't understand the question. He explained it. You asked for it. Now, I am very much afraid, for your own account, you might be asking for more—to lock horns with Mr. Arens on this general subject.

You asked for the definition. He gave it to you.

Now there is one question pending. Will you repeat it?

Mr. ARENS. Are you now a member of the Communist Party?

Mr. O'DELL. Since you are discussing a party, for me to answer that it would not mean that if you wanted to go over to Mississippi and find out when—

Mr. ARENS. Mr. Chairman, I respectfully suggest that the witness be now ordered and directed to answer the question.

Mr. WILLIS. I order and direct you to answer the simple question: Are you now a member of the Communist Party?

Mr. O'DELL. Since we are not concerned with the subversive activities, as far as oppression of the Negro people is concerned, I have to rely upon all of the immunity that the Constitution of the United States gives me as a Negro, because I am concerned with subversive activities that have kept my people segregated for this long time.

(The witness conferred with his counsel.)

Mr. O'DELL. So the first and 15th amendments, and any other amendment of the Constitution that offers me support and protection from not being persecuted because I am concerned with the oppression of the Negro people, and you are talking about something that started over 100 years ago.

Mr. ARENS. Do you honestly feel, and are you trying to make this committee and the people of this country believe, that you, a member of the Communist conspiracy, responsive to the will of the Kremlin, are in truth and in fact, concerned about the welfare of the Negro people of this country?

Mr. O'DELL. I wouldn't try to make you believe anything.

Mr. ARENS. Then stand up and tell this committee while you are under oath whether or not your activities and this facade that you are throwing around yourself in this aura of so-called respectability are not a front for the conspiratorial activities of yourself as a member of the Communist Party.

Mr. O'DELL. The Jim Crow system in the United States is not a front; it is a very real thing, which every Negro in the United States has experienced. It is not a front. If you think it is a front, you have a great deal to learn about your own country, not worrying about what some international thing—I don't know anything about.

Mr. ARENS. Do you know anything about the Communist Party?

Mr. O'DELL. I answered that question previously.

(At this point Representative Jackson returned to the hearing room.)

Mr. ARENS. Now, I should like to display to you—

Mr. O'DELL. Mr. Chairman, I would like to make a statement in this—

Mr. ARENS. I should like to display to you now, please, an outline, a directive, "Proposals on Southern Party Organization, 1955, 1956," which was procured from your premises in New Orleans, and in which are set forth here in detail: organizational plans and specifications, mass agitation, permeation of the press, Party building, cadres, literature, finances, educational activities, outlined plans for industrial concentration, and the like, including a bibliography of books on international communism.

Kindly look at that document and tell this committee, first of all, whether you have ever seen it before.

(The witness conferred with his counsel.)

Mr. O'DELL. I don't recall ever seeing any such document.

(At this point Representative Tuck left the hearing room.)

Mr. ARENS. Are you sure you are telling the truth?

Mr. O'DELL. That is my answer.

Mr. ARENS. I should like to read you some testimony with reference to this particular document and see if it might refresh your recollection.

tion. This testimony, an excerpt from which I am now going to read, was taken by this committee on February 14, 1957, in New Orleans. I was at that time interrogating Sergeant Badeaux, of the New Orleans Anti-Subversive Squad.

Q. Will you kindly proceed at your own pace, Sergeant, to tell us about these documents and their significance?

A. At that time, among other documents, he had this particular document, which I have just displayed to you.

Sergeant BADEAUX. We were particularly fortunate in receiving this first document. At the time that we obtained it, it was, you might say, of recent vintage. It is the proposals on the entire Southern Communist Party Organization for 1955 and 1956.

Q. Was that seized on the premises of a person you know to be a Communist agent?

A. Yes. We have known this man to be, as a matter of fact, the top man in the State since 1950.

Q. Can you disclose the name of this Communist agent?

A. Yes. Hunter Pitts O'Dell.

Do you want the record now to stand that you have never seen this document before?

Mr. O'DELL. I don't recall seeing that document.

(Document marked "O'Dell Exhibit No. 1" and retained in committee files.)

Mr. ARENS. Did you live in New Orleans in 1957 at any time?

Mr. O'DELL. What would where I live have to do with subversive activities?

Mr. ARENS. Mr. Chairman, I respectfully suggest the witness now be ordered and directed to answer the question.

Mr. WILLIS. Yes. You are ordered and directed to answer the question.

(The witness conferred with his counsel.)

Mr. O'DELL. Would you have the court reporter repeat that question, please?

Mr. WILLIS. Yes, the reporter will please read the last question.

(The reporter read from his notes as requested.)

(The witness conferred with his counsel.)

Mr. O'DELL. I refuse to answer that question.

Mr. ARENS. Why?

Mr. O'DELL. On the basis of the first and fifth amendments, sir.

Mr. ARENS. Have you in addition to your other activities been an author?

Mr. O'DELL. I have no knowledge of ever having been an author.

Mr. ARENS. I should like to display to you now a photostatic copy of the Communist publication, Political Affairs, in which appears an article entitled "The Political Scene in Louisiana," and the author's name, according to Political Affairs, is Hunter O'Dell.

Please look at that article which I shall now display to you and tell this committee whether or not that refreshes your recollection with reference to your activities in the literary field.

(The witness conferred with his counsel.)

Mr. O'DELL. I decline to answer that under the same constitutional provisions.

Mr. ARENS. Doesn't this refresh your recollection?

(The witness conferred with his counsel.)

Mr. O'DELL. My answer is: I refuse to answer the question on the basis of the first and fifth amendments.

Mr. ARENS. I put it to you as a fact, and ask you to affirm or deny the fact, that you are the Hunter O'Dell alluded to as the author of this article appearing in Political Affairs, which has been cited as the official Communist Party monthly theoretical organ.

Mr. O'DELL. My stand is the same. I refuse to answer that on the same grounds.

(Document marked "O'Dell Exhibit No. 2," and retained in committee files.)

Mr. ARENS. Were you ever expelled from the CIO National Maritime Union?

(The witness conferred with his counsel.)

Mr. O'DELL. I refuse to answer that, on the same grounds.

Mr. ARENS. Have you ever been a member of the National Maritime Union?

(The witness conferred with his counsel.)

Mr. O'DELL. I refuse to answer that.

Mr. WILLIS. Why?

Mr. ARENS. Why?

Mr. O'DELL. On the same grounds, the first and fifth amendments to the Constitution.

Mr. ARENS. I should like to display to you now a copy of the Communist Daily Worker, Wednesday, July 5, 1950, and I will read to you an excerpt from this article and see if you can't help this Committee on Un-American Activities which is trying to develop factual information to preserve this country under whose flag you have protection.

Mr. O'DELL. You are trying to preserve the segregation system, too. I see that.

Mr. ARENS. The article reads:

TEXAS NEGRO DOUBTS SEAMAN FOR CIRCULATING PEACE PLAN

GALVESTON, TEXAS, July 4.—Hunter O'Dell, Negro seaman, who sailed during World War II, was expelled from the CIO National Maritime Union here for circulating peace petitions aboard the S. S. Simon Benson.

This appeared in the Communist Daily Worker, as I say, July 5, 1950.

Kindly look at this article and see if this might refresh your recollection with respect to that particular incident.

(The witness conferred with his counsel.)

Mr. O'DELL. I refuse to answer on the same grounds, the first and fifth amendments to the Constitution.

(Document marked "O'Dell Exhibit No. 3" and retained in committee files.)

Mr. ARENS. Do you know a man by the name of Arthur Eugene?

(The witness conferred with his counsel.)

Mr. O'DELL. I don't recall the name.

Mr. ARENS. Let me read you a little testimony. Perhaps it might refresh your recollection.

Arthur Eugene is a man who had been in the Communist Party. He likewise was a Negro, a patriotic Negro. He told about his activities in the Communist Party, about the efforts of the conspirators in the

party to use issues by which they could stir up race relations for Communist conspiratorial purposes.

He told about how he resented it, and why patriotic people of your race would resent that type of thing.

Then he continued, in the course of the interrogation which we had with him while he was under oath, and told about a particular Communist Party committee.

Here is the question which I asked him when he was under oath, in 1957:

Moving up in the chronology of your activities in the party, do you recall in 1949 whether or not a committee was established here in New Orleans to protest the conviction of the twelve Communist Party members who were convicted in New York City?

Eugene's answer was:

Yes, sir; there were.

Q. Who was on this committee?

A. Steve Nelson, Bob Martin, Hunter Pitts O'Dell, Lee Brown. There were a number of others who participated in it.

(The witness conferred with his counsel.)

Mr. ARENS. Now, tell this committee, while you are under oath, whether or not my reading of that testimony refreshes your recollection with reference to your participation in that enterprise.

(The witness conferred with his counsel.)

Mr. O'DELL. No, it does not.

Mr. ARENS. Do you deny your participation in that enterprise?

Mr. O'DELL. I already answered the question.

Mr. ARENS. Mr. Chairman, I respectfully suggest that the witness be ordered and directed to answer the last principal outstanding question.

Mr. WILLIS. I direct you to answer the question.

Mr. O'DELL. I decline to answer it, under the same grounds, the first and fifth amendments to the Constitution.

Mr. ARENS. I respectfully suggest, Mr. Chairman, that this will conclude the status interrogation of this witness.

Mr. JACKSON. I have no questions, Mr. Chairman. But I have an observation I should like to make.

I cannot help but reflect on the progress that has been made by individuals like Ralph Bunche, Marian Anderson, and Jackie Robinson. The latter's testimony before this very committee was some of the best the committee has ever taken, and the fact has been established in abundant testimony that efforts to infiltrate a substantial segment of the Negro population of America by the Communist Party have fallen flat.

I would just like to have that in the record on the testimony of members of the Negro race, who should know, and who were willing to testify as to what they had found out about the Communist Party.

Mr. O'DELL. I would like to make a statement, too, since the statement—

Mr. ARENS. The rules of this committee provide that any statement that you would like to submit to the committee should be submitted in advance of the hearing for consideration by the committee, to determine whether or not it would care to incorporate it in the record.

(The witness conferred with his counsel.)

Mr. JACKSON. Mr. Chairman, on that point, let us read into the record at this time the provision of Rule IX of the committee on statements:

Any witness desiring to make a prepared or written statement for the record of the proceedings in executive or public sessions shall file a copy of such statement with the counsel of the Committee within a reasonable period of time in advance of the hearing at which the statement is to be presented.

All such statements so received which are relevant and germane to the subject of the investigation may, upon approval, at the conclusion of the testimony of the witness, by a majority vote of the Committee or Subcommittee members present, be inserted in the official transcript of the proceedings.

Mr. WILLIS. As a matter of fact—I may be wrong in this specific instance—but it is my understanding that witnesses who were summoned to appear here were given a copy of the rules, and in fairness, so they would know well in advance.

Mr. O'DELL. I didn't receive a copy. All I want to do is make a statement in reply to Mr. Jackson's statement. I didn't receive a copy of that. If I was supposed to have, it was your obligation.

Mr. ARENS. It is a matter of routine. Whether or not it was forgotten in this particular instance, I do not know.

Mr. Chairman, if you please, sir, I respectfully request that the exhibits displayed to this witness be appropriately marked and incorporated by reference in the record.

Mr. WILLIS. So ordered.

Mr. O'DELL. Mr. Chairman, I suggest that this be incorporated along with it, this statement that I have—

(Subcommittee members present, Representatives Willis and Jackson.)

(At this point a short recess was taken, after which the hearing was resumed.)

Mr. WILLIS. The subcommittee will come to order.

(Subcommittee members present, Representatives Willis and Jackson.)

Mr. WILLIS. A short while ago a witness was called, William Matthews, the young man who said he didn't have a lawyer, and counsel for our committee asked a member of the staff to contact the local bar and in order not to interrupt the hearings our colleague from California attended to the matter, and I am wondering if he has a report to make about a local member of the bar offering his or her services to this young man?

Mr. JACKSON. Mr. Chairman, immediately when the witness indicated that he was without counsel, we contacted the Legal Aid Society of Atlanta, explained the situation, and they very kindly consented in the best tradition of jurisprudence which gives everyone, no matter of what heinous crime he may stand accused, the right of counsel. The Legal Aid Society immediately volunteered to send counsel to the committee room to act as counsel for the witness. In the interim, however, the witness had made other arrangements for counsel.

However, we do want to express the appreciation of the subcommittee and of the full committee to the Legal Aid Society for its willingness to help in this matter.

Mr. WILLIS. And counsel was made available?

Mr. JACKSON. Counsel was made available. I think she is still in the room. However, the witness has made interim arrangements for representation.

Mr. ARENS. May I call the witness, Mr. Chairman?

Mr. WILLIS. William Matthews, kindly resume the witness stand.

Mr. ARENS. So there may be no question as to formalities of this particular proceeding, Mr. Chairman, I respectfully suggest it might be well to again swear the witness.

Mr. WILLIS. Again, yes.

Kindly raise your right hand.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MATTHEWS. I do.

TESTIMONY OF WILLIAM MATTHEWS, ACCOMPANIED BY COUNSEL, JOSEPH FORER

Mr. ARENS. Kindly identify yourself by name, residence, and occupation.

Mr. MATTHEWS. My name is William Matthews. I live at 2082 Union Street, in Brooklyn, New York, and I work for a camera manufacturer.

Mr. ARENS. You are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. MATTHEWS. Yes, I did.

Mr. ARENS. And you are represented by counsel?

Mr. MATTHEWS. Yes, I am.

Mr. ARENS. Counsel, kindly identify yourself.

Mr. FORER. I am Joseph Forer of Washington, D. C.; and on the question of representation of this witness, I should like the record to show that after the witness was informed by counsel for the committee that the Atlanta Bar Association, whom the committee had requested to supply counsel, was apparently unable to do so, the witness requested me to represent him.

At his request, not at the request of the committee, I agreed to represent him and was able to consult with him during recesses and while other witnesses were testifying.

Thereafter, as I understood it, someone, a lawyer, came from the Legal Aid Society, and the witness informed the lawyer from the Legal Aid Society that he preferred to have me as his attorney.

Mr. ARENS. Where and when were you born?

Mr. MATTHEWS. January 19, 1936, in Erwin, North Carolina.

Mr. ARENS. I didn't get the name of the city.

Mr. MATTHEWS. Erwin.

Mr. ARENS. Would you accommodate me by giving me that date again? I slipped up on that.

Mr. MATTHEWS. January 19, 1936.

Mr. ARENS. Tell us about your education, please.

Mr. MATTHEWS. I completed eleventh grade in high school, that's all.

Mr. ARENS. When did you—

Mr. MATTHEWS. Tenth grade—beg your pardon.

Mr. ARENS. When did you complete your high-school education?

Mr. MATTHEWS. I am not sure, but I think it was around 1950, but then I started back for 3 months and I quit again.

Mr. ARENS. Beginning, we will say about 1950, give us the principal employments which you had.

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer on my past employment on the grounds of the fifth amendment of the Constitution.

Mr. ARENS. Do you honestly contend that if you told this committee truthfully of the employments which you had since 1950, you would be supplying information which might be used against you in a criminal proceeding?

(The witness conferred with his counsel.)

Mr. MATTHEWS. It is possible.

Mr. ARENS. Have you had any employments since 1950, since you completed your high-school work, concerning which you can give this committee information, without giving information which might be used against you in a criminal proceeding?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I am willing to tell you my present employment but not to discuss my past employment.

Mr. ARENS. How long has your present employment endured?

Mr. MATTHEWS. Approximately 2 years.

Mr. ARENS. What was your employment immediately prior to your present employment?

Mr. MATTHEWS. I refuse to answer, on the grounds of the fifth amendment, about my past employment.

Mr. ARENS. Where was your employment immediately prior to your present employment?

Mr. MATTHEWS. I refuse to answer that question on the same grounds.

Mr. ARENS. In what State were you employed immediately prior to your present employment?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse on the same ground and also because it is irrelevant.

Mr. ARENS. You mean irrelevant?

Mr. MATTHEWS. Yes, sir. I am not very well educated, as you can see.

Mr. FORER. It is still irrelevant, no matter how you spell it.

Mr. ARENS. Young man, are you right now—you are only 22 years of age, aren't you?

Mr. MATTHEWS. That is correct.

Mr. ARENS. Are you right now a member of the Communist Party?

Mr. MATTHEWS. I am not.

Mr. ARENS. Have you ever been a member of the Communist Party?

Mr. MATTHEWS. I have not.

Mr. ARENS. You have never been a member of the Communist Party?

Mr. MATTHEWS. No, sir.

Mr. ARENS. Do you know a man by the name of Penha?

Mr. MATTHEWS. No, sir.

Mr. ARENS. Are you married?

Mr. MATTHEWS. Yes, sir.

Mr. ARENS. Only for the purpose of identification, please, tell us your wife's name.

Mr. MATTHEWS. Ella Matthews.

Mr. ARENS. Is it Ella Levine Matthews?

Mr. MATTHEWS. Yes, sir.

Mr. ARENS. Only for the purpose of identification, tell us whether or not Ella Levine Matthews is the daughter of a man who works, or has worked in the recent past, for the Communist Daily Worker.

(The witness conferred with his counsel.)

Mr. MATTHEWS. I think that goes beyond identification.

Mr. ARENS. Could you, in your own words, tell us now how you deny Communist Party membership and yet invoke the provisions of the fifth amendment against self-incrimination on all employment which you have been engaged in since 1950, with the exception of your present employment?

Mr. MATTHEWS. I invoke the fifth amendment in good faith.

Mr. ARENS. Have you, in the course of the last 8 years, been under Communist Party discipline?

Mr. MATTHEWS. I have not, to the best of my knowledge. I don't know exactly what you mean by that. No one tells me what to do. I got my own mind. I do my own thinking and I am not a politician, and politics has got no part with me whatsoever.

Mr. ARENS. Have you ever attempted to obtain employment in the textile industry?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer on the grounds of the fifth amendment.

Mr. ARENS. Are you a non-member Communist?

Mr. MATTHEWS. I answered that already.

Mr. FORER. What is it?

Mr. ARENS. What type of work have you been engaged in, in this period from 1950 up until 1956 when you entered your present employment?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer questions about my past employment.

Mr. ARENS. Tell us the type of employment which you have been engaged in.

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse for the same reason.

Mr. JACKSON. Was the employment legal or was it an illegal employment?

Mr. MATTHEWS. I refuse for the same reason.

Mr. ARENS. Have you ever been a member of the Young Communist League or the Labor Youth League?

Mr. MATTHEWS. I have not.

Mr. ARENS. Have you ever been a member of an organization, to your certain knowledge, controlled by the Communist Party?

Mr. MATTHEWS. I have not.

Mr. ARENS. Do you know Jerome Van Camp?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer on the ground of the fifth amendment.

Mr. ARENS. Jerome Van Camp has been identified under oath as a hard-core member of the Communist Party. Has Jerome Van Camp been using you for Communist Party purposes?

(The witness conferred with his counsel.)

Mr. MATTHEWS. Nobody uses me.

Mr. ARENS. When did you last see Jerome Van Camp?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer on the grounds of the fifth amendment.

Mr. ARENS. Do you know William Evans?

Mr. FORER. Excuse me a second.

(Counsel conferred with the witness.)

Mr. MATTHEWS. I refuse to answer that question.

Mr. ARENS. Why?

(The witness conferred with his counsel.)

Mr. MATTHEWS. The fifth amendment, not relevant.

Mr. ARENS. Do you know Oscar Berland?

Mr. MATTHEWS. I refuse to answer that question on the same grounds.

Mr. ARENS. All three of these men have been identified here under oath in these proceedings, in the course of the last day or so, as hard-core Communists. Do you have information respecting any of them or all of them?

(The witness conferred with his counsel.)

Mr. MATTHEWS. What do you mean information?

Mr. ARENS. Do you know them?

Mr. MATTHEWS. I refuse to answer that.

Mr. ARENS. Are you in contact with them?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer that question on the ground of the fifth amendment of the Constitution.

Mr. ARENS. Do you know Armando Penha?

Mr. MATTHEWS. I do not. I told you I am not a Communist and I have never been a Communist and I never intend to be a Communist.

Mr. ARENS. We congratulate you on this assertion.

Do you presently possess information respecting Communist Party activities of Fanny Licht?

(The witness conferred with his counsel.)

Mr. MATTHEWS. No.

Mr. ARENS. Do you know Fanny Licht?

(The witness conferred with his counsel.)

Mr. MATTHEWS. I refuse to answer.

Mr. ARENS. Why?

Mr. MATTHEWS. Same grounds as before stated.

Mr. ARENS. Do you know, or have you known, Junius Scales?

Mr. MATTHEWS. I refuse to answer on the same grounds as before stated.

Mr. ARENS. Mr. Chairman, I respectfully suggest that concludes the staff-interrogation of this witness.

Mr. WILLIS. The witness is excused.

Mr. ARENS. Excuse me just one moment. I would like to ask just one more question, Mr. Chairman.

I asked you, Mr. Matthews, whether or not you knew a person by the name of Armando Penha.

Mr. Penha just stepped forward to remind me here that, in the course of his testimony a day or so ago, he stated that while he was in the Communist Party, he used the party name of Tom.

Did you, or have you at any time, known a person in the Communist Party who used the code name of Tom?

Mr. MATTHEWS. To the best of my memory, no.

Mr. ARENS. Mr. Chairman, that concludes the staff interrogation of this witness.

Mr. WILLIS. The committee will stand in recess until 10 o'clock tomorrow morning.

(Subcommittee members present: Representatives Willis and Jackson.)

(Whereupon, at 4:10 p. m., Wednesday, July 30, 1958, the subcommittee recessed, to reconvene at 10 a. m. Thursday, July 31, 1958.)

COMMUNIST INFILTRATION AND ACTIVITIES IN THE SOUTH

THURSDAY, JULY 31, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Atlanta, Ga.

PUBLIC HEARING

The subcommittee of the Committee on Un-American Activities met, pursuant to recess, at 10 o'clock a. m. in the courtroom, Old Post Office Building, Atlanta, Georgia. Hon. Edwin E. Willis (chairman of the subcommittee) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana, and Donald L. Jackson, of California.

Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

Mr. WILLIS. The subcommittee will please come to order.

The Chair wishes to make this statement.

Over the course of the last 2 days we have heard the testimony of many who have been identified by sworn testimony as Communists, whose ultimate objective is to bring about a Communist regime in America.

This morning, the witness whom we shall hear has lived under Communist regime. He will tell of communism in action. Counsel has said frequently that the Communists masquerade under or behind humanitarian issues. We will remove that mask this morning.

This witness's complete identity cannot be revealed for reasons of security, but the committee has carefully checked his integrity and reliability, and we can vouch for him. Accordingly, there will be no pictures taken of this witness, and he will not reveal his name or exact location of his present residence, except to say that he is now a resident in the Southland.

Would you call the witness, Mr. Arens?

Mr. JACKSON. Mr. Chairman, one matter before the witness is sworn.

Yesterday, it will be recalled, a witness appeared without counsel and was excused by the committee while arrangements could be made for counsel. He explained that he did not have resources to pay for counsel, and the committee undertook to obtain necessary legal counsel for him.

He finally obtained the services of an attorney in the room who had represented other witnesses here. However, advertently or inadvertently, the impression may have been left by an announcement made by his counsel, when the witness finally did take the stand, that

the Atlanta Bar Association had been unable or unwilling to represent the witness.

I should like to make it perfectly clear that the call that was made by the attaché here with reference to obtaining counsel for the witness was not made to the Atlanta Bar Association, but was made to the Legal Aid Society. The Legal Aid Society was most cooperative; and within a matter of a very few minutes, counsel was here from the Society for the purposes of representing the witness.

However, there should be no misunderstanding about the position of the committee vis-a-vis the Bar Association. I am confident that had the Bar Association been contacted, they would have been very willing and very anxious, in the best traditions of the legal profession, to furnish counsel for the witness.

Mr. ARENS. Will you kindly stand while the chairman administers an oath?

Mr. WILLIS. Please raise your right hand.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

The WITNESS. Yes, sir; I do.

Mr. WILLIS. Please talk slowly and address yourself to the mike so we can understand you. We understand that you have some difficulty in expressing yourself in the English language, but take your time, and we will be glad to hear from you.

TESTIMONY OF A HUNGARIAN REFUGEE

Mr. ARENS. You are presently a resident of the Southland?

The WITNESS. Yes, sir.

Mr. ARENS. And how long have you been a resident of the South, here in the United States?

The WITNESS. About one and a half years.

Mr. ARENS. Where and when were you born?

The WITNESS. I was born in Budapest, Hungary, in 1928, July 8.

Mr. ARENS. Give us just a word, please, about your family, your mother and your father, principally with reference to your father's occupation.

The WITNESS. My father was a doctor, a physician. He was a heart specialist, and we lived in Hungary, Budapest. My mother was just a housewife. I had a sister who is still in Hungary.

Mr. ARENS. In the latter part of 1944, or perhaps the early part of 1945, would you detail for us any occurrences in your life of considerable consequence when you were then, as I believe, about 16 years of age and a resident in Budapest.

The WITNESS. In 1945, in January, the Soviet Army occupied the half part of Budapest, and in about 3 weeks after the occupation of this part of the town, I and my father were captured by the NKVD, the Soviet Secret Police.

Mr. ARENS. Where did they take custody of you?

The WITNESS. They came to our apartment.

Mr. ARENS. And who in your family was in the apartment, in addition to yourself and your father?

The WITNESS. There was my mother, my sister, and a housemaid. We had housemaids.

Mr. ARENS. How old was your sister at the time?

The WITNESS. My sister was about 12 or 13.

Mr. ARENS. And where did the Soviet Secret Police take you when they captured you and took you into custody?

The WITNESS. They took me to the headquarters of the NKVD about 20 miles out from Budapest.

Mr. ARENS. When you say NKVD, you mean the Soviet Secret Police?

The WITNESS. The Soviet Secret Police.

Mr. WILLIS. You alone, or you and your father?

The WITNESS. I was with my father.

Mr. WILLIS. All right.

Mr. ARENS. Had either you or your father engaged in any kind of activities which, in the most general sense, could be characterized as political activities or activities of public affairs of any character?

The WITNESS. No, we were not.

Mr. ARENS. Now, just tell us in your own words what happened when you were taken to the NKVD headquarters in Budapest or outside of Budapest, I believe you said, some 20 miles.

The WITNESS. First of all, they separated us. They separated me from my father and they put me in a separate room. Later on they started to interrogate me and my father. I don't know. Do you want to know about the interrogation?

Mr. ARENS. Well, give us just the highlights of it, please.

The WITNESS. First they interrogated me. They asked of me very usual questions, like where I was born, where I went to school, what education I have; and the second time they asked about my father, what did he do, and with what kind of people was he connected.

They interrogated my father, too, but I had never the opportunity to ask my father what they asked him about.

Mr. ARENS. Were there other people who were likewise being interrogated or were captives of the Soviet Secret Police?

The WITNESS. Yes, there were very many people, but I was separated from them.

Mr. ARENS. Just tell us in your own words what happened there at the Secret Police headquarters.

The WITNESS. So after they interrogated us, I figured out that they wanted me to tell something, but I didn't know. They wanted me to tell that I am a spy against the Soviet Union.

Mr. ARENS. They wanted you to tell that you were a spy against the Soviet Union?

The WITNESS. Yes.

Mr. ARENS. And you were just 16 years of age?

The WITNESS. I was 16 years old.

Mr. ARENS. Had you engaged in any type of activities of that character?

The WITNESS. I never did.

Mr. ARENS. Had your father?

The WITNESS. My father had not, either.

Mr. ARENS. Go right ahead, please, sir.

The WITNESS. I think they captured us because they thought that it might be that we could do some activity, because already the Communist Government took over in Hungary; and maybe they thought

since we had quite a good life in Hungary, we would oppose this Soviet regime.

Mr. ARENS. Go ahead and tell us the incidents that transpired there at the Secret Police headquarters.

The WITNESS. After a couple interrogations, a Soviet colonel came to me.

Mr. ARENS. A colonel, did you say?

The WITNESS. A colonel came to me, and he gave me exactly this question: "Do you know that you are a spy against the Soviet Union?"

I told him, "No, I am not." And he was very angry. He was getting very angry, and he wanted that I sign a paper, but I didn't want to sign this paper, because I never was a spy and I didn't know anything about this whole thing.

So from here they took us to another place in trucks.

Mr. ARENS. About how far away was it from the first place where you were interrogated?

The WITNESS. About 20 miles northeast. They took us the second time inside the town in Budapest, in the heart of the city.

Mr. ARENS. All right, sir. Go right ahead, please, sir.

The WITNESS. Here we were put in a house that was damaged from bombs. It was in February, and it was very cold, of course. A fellow prisoner jumped out from the window, and of course he died on the street, and after this incident—

Mr. ARENS. Why did he do that?

The WITNESS. Well, I think he knew already what will happen to him. He knew much more about the Communist system than we did.

Mr. ARENS. He knew more about what might be coming than you did?

The WITNESS. Yes. I think that he was a smart fellow, that he jumped out.

Mr. ARENS. Smart that he killed himself, rather than subject himself to the indignities and torture which you and your father subsequently endured: is that correct?

The WITNESS. Yes.

Mr. ARENS. All right, sir; go right ahead, please.

The WITNESS. After this incident we were put in a cellar of this house. In the cellar was water on the floor, and the conditions were just terrible. There were women and men together. There was no food and no washing utilities and no rest room. We were here about 2 weeks. I and my father were never interrogated here. We were always separated. I was separated from my father. Only from the door I could see him, but I couldn't talk to him.

From here we were taken to another place in Hungary about, I don't know, 60 miles from here; and here we were interrogated again, but with much more Trotsky methods. Here I had to sign a paper, not a paper, well, a book about 40 pages. I don't know what was in there because it was everything in Russian, and at this time I didn't know anything about the Russian language, and they forced me to sign this paper. The first time I didn't want to sign it, but I didn't know what was in it. Later, as they started to beat me—and of course we didn't get any water and we got no food—

Mr. ARENS. How about sleep?

The WITNESS. As to sleep, we couldn't get sleep because we were so many people in a little room pressed.

Mr. ARENS. About how many people were in the room, and about what was the size of the room that you were in?

The WITNESS. There were about 30 to 50 people in a room like usually an apartment room here in the United States.

Mr. ARENS. All right, sir. Go right ahead. You were telling about the signature you were about to affix to this document.

Mr. JACKSON. And obviously, no fifth amendment.

The WITNESS. Yes, that is right.

Yesterday I heard here the hearings that if the witness doesn't want to answer he just says, "I refuse to answer." This was quite fun for me, because such things are not in the Soviet Union. In the Soviet Union there is only one party, the Communist Party; and there is not another party. Whether you want to or not, you have to be with the Communists.

Mr. ARENS. All right, sir. You were about to affix your signature to this document.

The WITNESS. I signed this paper because they told me that "if you will not sign we will sign it for you," so that there was no reason not to sign it, and everything is lost.

Mr. ARENS. What happened next?

The WITNESS. From here they took us to Austria, to Baden by Vienna. It is about 20 miles from Vienna.

Mr. ARENS. How did you go. By what mode?

The WITNESS. With trucks, GMC American-made trucks.

Mr. ARENS. Was your father in your company?

The WITNESS. My father was in another truck.

Mr. ARENS. And how many people were in the truck with you?

The WITNESS. In one truck, there were about 30 people in one truck.

Mr. ARENS. What was the nature of the weather at this time?

The WITNESS. The nature of the weather, it was quite cold. It was early springtime; it was the first days of April.

Mr. ARENS. All right, sir; go right ahead.

The WITNESS. In Baden by Vienna we were about 2 weeks, and here I was sentenced to 8 years prison with forced labor camp, and my father was sentenced at 15 years labor camp.

Mr. ARENS. Did you have a trial?

The WITNESS. As they say, I had a trial.

Mr. ARENS. I did not understand you.

The WITNESS. The Russians, the Soviets, said that I had a trial, but I don't call this a trial. In about 3 hours there were about 150 men sentenced to different times.

Mr. ARENS. Did you have counsel, a lawyer representing you?

The WITNESS. No such a thing.

Mr. ARENS. Was this document which you signed presented to the forum before which you were sentenced?

The WITNESS. Yes, I think it was the judge who sentenced us to 8 years, who had this paper; and I should add that all this trial was in the Russian language, and I didn't understand—none of us did understand—the whole process what was going on.

Mr. ARENS. Did you know the contents of the document that you signed?

The WITNESS. No; I did not know until now.

Mr. ARENS. You say that they beat you. How did they beat you? With what instruments?

The WITNESS. First the interrogator beat me with a piece of wood, and the second time he hit me with the butt from the stove.

Mr. ARENS. You just concluded in the chronology of your testimony, the trial—such as it was—and the sentencing of yourself for 8 years to a slave labor existence in various slave labor camps, and your father, you said, 15 years; is that correct?

The WITNESS. Yes.

Mr. ARENS. Now, just tell us the next thing that happened.

The WITNESS. The next thing there arrived many railroad cars. They put us in railroad cars. These cars were for animals, not for men.

Mr. ARENS. How many were in the car in which they put you?

The WITNESS. There were about 50 men in 1 car. The cars were all locked, and it was already June at this time, and it was terribly hot inside.

Mr. ARENS. Was your father in the same car you were?

The WITNESS. No, my father was not in the same car.

Mr. ARENS. How many cars were there in the particular train in which you were incarcerated?

The WITNESS. If I tell 40 or 50, I do not lie.

Mr. ARENS. Forty or 50 cars?

The WITNESS. Yes, sir.

Mr. ARENS. Did each car have approximately the same number of human beings in it?

The WITNESS. Yes.

Mr. ARENS. Before we proceed further, in the particular car in which you were, what was the percentage of Hungarians and what was the percentage of non-Hungarians who were being taken to the slave labor camps?

The WITNESS. It was about 10 percent Hungarians.

Mr. ARENS. And who were the others?

The WITNESS. The others were Russians, Russian soldiers.

Mr. ARENS. And were there women, as well as men?

The WITNESS. No; the women were separated in the railroad cars.

Mr. ARENS. I mean, were there women in the train, as well as men?

The WITNESS. Oh, yes, there were, but they were separated.

Mr. ARENS. They put the women in different cars?

The WITNESS. Yes.

Mr. ARENS. Were there children?

The WITNESS. No children—I didn't see any.

Mr. ARENS. What was the minimum age? You were then about 16?

The WITNESS. Mostly they were about this same age as I was.

Mr. ARENS. Most of them were young people?

The WITNESS. Yes, 16, 15, 17, 20. Most of them were young people.

Mr. ARENS. They put you in this railroad car with about 50 other people and locked the car; is that correct?

The WITNESS. Yes.

Mr. ARENS. I do not want to appear at all immodest, but were there any comfort facilities within the railroad car?

The WITNESS. There was a hole made in the ear, and this was it.

Mr. ARENS. In the floor of the car?

The WITNESS. In the floor of the car, and this was the restroom for us people.

Mr. ARENS. And were there any water-fountain arrangements in the car?

The WITNESS. No, there was not. We would get water once a day, and they would just put in a bucket of water, and they gave us no jars or anything with which we could drink, and so this water was all spoiled, and nobody could drink any.

Mr. ARENS. Were there arrangements where you could sleep, cots or bedding of any kind?

The WITNESS. You could sleep on your clothes; that was all—on the floor.

Mr. ARENS. Were there guards with weapons to insure the security of the custody?

The WITNESS. Inside the railroad car, of course, there was not, because it was locked. There were two guards on each car with machine-gun on the top.

Mr. ARENS. Were these Russian soldiers?

The WITNESS. Not Russian—Soviet.

Mr. ARENS. How long were you in that car until you were out again on terra firma, out on the soil?

The WITNESS. Pardon?

Mr. ARENS. How long were you in that railroad car?

The WITNESS. About 3 weeks, 2½ to 3 weeks.

Mr. ARENS. You were not outside that railroad car in 3 weeks?

The WITNESS. No; we were not.

Mr. ARENS. Tell us about the food arrangements.

The WITNESS. We got once a day a spoonful of canned meat. This was the meat, the same kind that you can get here; even in America. American canned meat it was. It was American-made meat.

Mr. ARENS. Was there any particular incident in transit in this 3-week period that comes to your mind that you would like to recount?

The WITNESS. We suffered always in that we were very thirsty always. There was not enough water because it was terribly hot, because it was June—the middle of June—and I know that in the other railroad cars many people died; but in our railroad car, fortunately, only I died, and he died only in the last day when we arrived to our target.

Mr. ARENS. What happened when the people who were herded in these railroad cars en route to the slave labor camps died? Did they have any ceremony about disposing of them?

The WITNESS. The ceremony was that they put them in the earth, and that was the whole sentiment and nothing else.

Mr. ARENS. Were there any other incidents of consequence that occurred in the particular car in which you were being taken to slave labor camps?

The WITNESS. Well, we arrived in Odessa. This is on the shore near the Black Sea, which is already the Soviet Union. When we arrived we had to walk about 6 miles to the prison. We were so weak that it

was very difficult for us to walk. Finally we arrived in the prison, and I saw here my father, the last time in my life.

Mr. ARENS. Did you visit with him?

The WITNESS. Yes. For 1 hour we came together in a room, because there was a mixup there. They had many people when all these railroad cars arrived, and they didn't know where to put all these people. They just put us all in a couple rooms, and here I met my father.

Mr. ARENS. May I just inquire: In this prison in Odessa, this was not a slave-labor camp you first went to, was it?

The WITNESS. Yes, it was not; this was the first station.

Mr. ARENS. This was what we might call a reception station, in Odessa?

The WITNESS. Yes.

Mr. ARENS. Can you give us just a word about the physical description of this reception station?

The WITNESS. The first impression that you see from outside, it is a usual prison. From inside I never saw another prison because I never was a criminal. Here, I saw the first prison from the inside; it was very overcrowded. In a room there were about 100, 150 to 200 people in 1 room, and we were here about 2 weeks.

Mr. ARENS. Were there women as well as men there?

The WITNESS. Yes, but we were always separated from the women, never in one room with the women.

Mr. ARENS. What percentage of the prisoners in this reception center were Hungarians?

The WITNESS. The same, about, oh, in all this prison I think there may be 5 percent only.

Mr. ARENS. And who were the others?

The WITNESS. The others were, 90 percent were, Russians; and there were very few Austrians; there weren't any Germans this time, because they were not in Germany at this time.

Mr. ARENS. All right, sir. You say you were there for just a short time?

The WITNESS. About 2 weeks.

Mr. ARENS. Tell us what transpired next.

The WITNESS. From here I saw my father the last time, and I was put again in a railroad car, and again it was locked.

Mr. ARENS. About the same facilities as before?

The WITNESS. Yes, the same thing; and we went 3 days to Nikolaev. This is in the Soviet Union, of course, too, south from Moscow. This was the first so-called camp that I saw in my life.

Mr. ARENS. Tell us, first of all, what the camp looked like, and secondly, what happened and how long you were there.

The WITNESS. The camp looked like—it was surrounded with wires, I think with electric wires, I didn't touch it, of course. It was surrounded with electric wires, and inside there were about 1,200 people. We were working in a shipyard. We had to walk about 10 miles each way, 10 miles one way and 10 miles back. Our food was miserable. We got about one-half pound of bread a day, and soup once a day, and in the morning we got coffee.

Mr. ARENS. What did you do in this first slave-labor camp in which you were incarcerated?

The WITNESS. I did many things. I worked. I carried bricks. I pushed pushcarts, and construction work.

Mr. ARENS. Did the women work as well as the men?

The WITNESS. Yes; the women worked the same way as the men.

Mr. ARENS. To what type of work were the women assigned?

The WITNESS. Construction work, the same as I—carried the bricks, pushed pushcart, beat with the hammers, and so on.

Mr. ARENS. How did your fellow prisoners fare under this regime?

The WITNESS. I didn't understand.

Mr. ARENS. How did they get along? How did they do?

The WITNESS. Well, for the most of us, this was the first camp; and we thought that really, if we would work, then our food will be better, and everybody of us tried to work the best, tried to do the best what he could. But later on when we saw that it is the same thing, whether you work or don't work, of course, everybody didn't want to work always.

Mr. ARENS. What would happen if a person didn't work quite hard enough?

The WITNESS. Just as I told; they would drive him to work, but they didn't beat him. There was no beatings.

Mr. ARENS. All right, sir. Then what was the next occurrence?

The WITNESS. I was here in this camp about 6 weeks.

Mr. WILLIS. Did you get paid for that work?

The WITNESS. No, sir. In slave-labor camps, nobody gets in the Soviet Union paid.

Mr. ARENS. Did you ever learn how many people are presently, or were a year and a half ago when you were over there, in slave-labor camps in the Soviet Union?

The WITNESS. When I came home from the Soviet Union, this time Khrushchev took over the Government, and this time there were about 30 million, I think.

Mr. ARENS. 30 million in about the same status as you were?

The WITNESS. Yes.

Mr. ARENS. Political prisoners?

The WITNESS. Yes.

Mr. ARENS. All right, sir let us revert to your theme.

The WITNESS. Later—I should add this too—that later, when Khrushchev came to the Government he freed about 10 million, I am sure.

Mr. ARENS. So there would be, as of now, a rough estimate of about 20 million in these slave-labor camps?

The WITNESS. Yes.

Mr. ARENS. Let us proceed, if you please. You told us about this first slave-labor camp you were in and this construction work. You were there how long—about 6 weeks?

The WITNESS. I was there about 6 weeks.

Mr. ARENS. Then what happened?

The WITNESS. From here we shipped in a ship to Gberson. This is in Ukraine. This was a farm camp.

Mr. ARENS. Tell us about your experiences, if any of particular consequence, on this ship.

The WITNESS. The same thing like in the railroad cars, overcrowded ship. It took about one and a half days to go to our target.

Mr. ARENS. What was the weather like?

The WITNESS. The weather was summertime, hot. There was no water inside, of course.

Mr. ARENS. How many people were in the ship?

The WITNESS. This I don't know, I didn't count them.

Mr. ARENS. Did you have bunks and little cabins to sleep in, or other facilities?

The WITNESS. No; just inside, under the deck of the ship.

Mr. ARENS. Down in the hold, is that it?

The WITNESS. Yes.

Mr. ARENS. How about your food on this ship?

The WITNESS. Here we got food twice a day, canned beans.

Mr. ARENS. Were you likewise under the guns of the Soviet soldiers?

The WITNESS. The soldiers were not inside; they were outside. They were on the deck of the ship.

Mr. ARENS. And the slave laborers were down in the hold?

The WITNESS. Yes.

Mr. ARENS. Did any of the people perish in this process?

The WITNESS. Perish?

Mr. ARENS. Did they die, any of them?

The WITNESS. No; I don't think so.

Mr. ARENS. Not on the ship?

The WITNESS. Not on this ship.

Mr. ARENS. All right, sir; what happened after the ship arrived at its destination?

The WITNESS. We arrived in a farm camp.

Mr. ARENS. A farm camp?

The WITNESS. A farm camp, yes. Gherson, in Ukraine.

Mr. ARENS. A farm camp in the Ukraine?

The WITNESS. Yes.

Mr. ARENS. Tell us about that, please, sir.

The WITNESS. In this camp was, of course, no electricity, no water. Our food was what we could find on the fields. In this field were grown tomatoes, pickles, cabbages, and so forth.

Mr. ARENS. What did you do on this farm camp?

The WITNESS. I worked.

Mr. ARENS. What type of work?

The WITNESS. I don't know the right expression for this in English.

Mr. ARENS. Did you do farm work?

The WITNESS. Yes.

Mr. ARENS. Farm labor work?

The WITNESS. Yes, just farm labor work, like here, but not with tractors, of course not.

Mr. ARENS. Hand tools?

The WITNESS. Just hand tools, yes.

Mr. ARENS. How many people were in this slave-labor camp?

The WITNESS. In this camp, where I was, were about 500 people.

Mr. ARENS. Were women there, as well as men?

The WITNESS. Yes, there were women there, too.

Mr. ARENS. And did they do the handwork, too?

The WITNESS. Yes, of course, they did the same.

Mr. ARENS. What were the living conditions there?

The WITNESS. I was in this camp 11 months. I didn't change my underwear not once. We were very dirty and we had no opportunity to wash ourselves, and it was just terrible.

Mr. ARENS. Were most of the people in this camp likewise prisoners; likewise Russians?

The WITNESS. Yes; mostly Ukrainians. They were mostly Ukrainian people.

Mr. ARENS. You, of course, had an opportunity to talk with them and find out why they were there, did you not?

The WITNESS. This time I didn't know too well Russian, although I knew some, because—I don't know—I learned quite quickly the language. These Ukrainian people were all the same people as we were. They were captured from home. That is why, because the Communists—the Stalin regime thought that they would be against Communist system in the Ukraine.

Mr. ARENS. Now, kindly tell us what happened next, of consequence, in the sequence of your imprisonment.

The WITNESS. After 11 months I was taken to another collection prison, to Dnepropetrovsk.

Mr. ARENS. Where was that, in that general area?

The WITNESS. Dnepropetrovsk is in the Ukraine, too; it is by the River Dnieper.

Mr. ARENS. And you went by the same mode, in a railroad car?

The WITNESS. Yes.

Mr. ARENS. Crowded with other people?

The WITNESS. Yes, same thing.

Mr. ARENS. All right, sir.

The WITNESS. Here we were examined by doctors; and after this examination, they separated the young and the healthy men and they put all of us in a railroad car again and they told us that we would be shipped to Siberia.

Mr. ARENS. Were you one of the persons who was selected to go to Siberia?

The WITNESS. Yes, I was.

Mr. ARENS. And that was because you were relatively healthy, is that correct?

The WITNESS. Yes.

Mr. ARENS. You had no choice in the matter?

The WITNESS. Yes.

Mr. ARENS. Were you interrogated in any respect?

The WITNESS. No, I was not interrogated.

Mr. ARENS. When you said "Yes" a minute ago, you meant "No," did you not? You weren't consulted as to whether or not you would go to work in Siberia?

The WITNESS. Of course they didn't ask me. Just after the examination they saw that I am comparatively healthy and they took me.

Mr. ARENS. Then were you put in railroad cars again to be shipped to Siberia?

The WITNESS. In these railroad cars we were already not so many people inside. We were about 25 to 30.

Mr. ARENS. With about the same facilities?

The WITNESS. Yes, but the food was much better. We got, I think, twice or three times a day food, and we got water enough. We got jars,

so we were not suffering; we were not thirsty, and we were not so much hungry.

Mr. ARENS. All right, sir. Now, kindly proceed. Just how long did it take you to get to Siberia in this railroad car?

The WITNESS. This took exactly 31 days.

Mr. ARENS. Were you out of the car at any time in the 31 days?

The WITNESS. No, we were not. We were locked in all the time.

Mr. ARENS. What was the weather condition?

The WITNESS. Fortunately, this was in November and fortunately it was not so cold in the first part of the transportation. Only the next 3 days was quite cold, and they gave us an oven in the railroad car.

Mr. ARENS. They gave you an oven?

The WITNESS. An oven, yes.

Mr. ARENS. Did they give you warm clothing?

The WITNESS. What, please?

Mr. ARENS. Did they give you warm clothing?

The WITNESS. No; they didn't give us. They gave us wood.

Mr. ARENS. They gave you wood to burn in the stove to keep warm in the railroad car?

The WITNESS. Yes.

Mr. ARENS. Were there other cars in this train with prisoners in them enroute to Siberia?

The WITNESS. Yes, of course, about 40 or 50 cars.

Mr. ARENS. Tell us what occurred when you arrived in Siberia.

Mr. JACKSON. May I ask a question, Mr. Chairman?

Mr. WILLIS. Yes.

Mr. JACKSON. As to these cars, were there windows in the cars?

The WITNESS. These cars were made for animal transportation, and there were 4 little windows on the top of the car. It was very high. We couldn't look out from that.

Mr. JACKSON. Air came through there for ventilation?

The WITNESS. Yes; that is true.

Mr. WILLIS. Didn't they let you out now and then to let you walk around, to exercise, to limber up?

The WITNESS. No. For 31 days it was quite difficult. It is not so easy to take so many railroad cars through whole Russia, so that nobody can see. We were always moving only in the night, and in the daytime we were on a sidetrack somewhere in the railroad station.

Mr. WILLIS. So far as the people were concerned, if there were, let us say, an American tourist who happened to be around the railroad track when it went by, nobody would know who was in these cars?

The WITNESS. Nobody would know, nobody would know. From the outside it looks like animals are inside the cars. But we met in many stations people in Siberia, who knew that inside these cars are people; and everywhere we could see only sympathy from these people; and they gave us food.

They dropped through this little window food and they gave us good words; and I can tell you, nowhere could I see anything but sympathy from these people. We got always sympathy from these people.

Mr. ARENS. That is, the Russian people, by and large, who were the victims of the regime?

The WITNESS. Yes.

Mr. ARENS. All right, sir. Now you have arrived at this point of destination in Siberia.

The WITNESS. We have arrived at Bukhta Nakhodka, which is the name. It is about 70 miles from Vladivostok. It is on the shore from the sea, and in this big receiving camp was already about 40 thousand people.

Mr. ARENS. What was the nature of this camp, just a receiving camp?

The WITNESS. Yes, just a receiving camp.

Mr. ARENS. A reception center?

The WITNESS. A reception center.

Mr. ARENS. Were there women, as well as men?

The WITNESS. Yes; there were women. There was no work in there.

Mr. ARENS. No work in that camp?

The WITNESS. No.

Mr. ARENS. What happened next, please?

The WITNESS. Of course, in this camp were terrible conditions: again no water, very little food, and there happened here many funny things in this camp. I can give you a little episode. Once there was a man standing beside the wire fence of the camp and he was looking to the tower where a Russian soldier watched us with a machinegun, and later this man recognized that this soldier was his son.

Mr. ARENS. The man recognized that the man who was holding the machinegun was his own son?

The WITNESS. Yes.

Mr. ARENS. What happened then?

The WITNESS. Of course, there was a big scandal, and this soldier was taken away. I don't know what happened to him.

Mr. ARENS. How long were you in this reception center in Siberia?

The WITNESS. In this reception center I was about 2 weeks. We were loaded in a ship. I should tell that the ship was American.

Mr. ARENS. You were loaded in an American ship?

The WITNESS. Yes, but with Russian letters on it.

Mr. ARENS. All right, sir: then what happened?

The WITNESS. We were loaded, about 3,000 or 4,000 men in this ship, and the conditions were terrible inside.

Mr. ARENS. This was an American-made ship but it was manned by Russians. It must have been some of the Lend-Lease.

The WITNESS. Yes, exactly.

Mr. ARENS. All right, sir. Three or four thousand people were in that ship?

The WITNESS. Yes.

Mr. ARENS. And what was the weather like?

The WITNESS. The weather was already cold.

Mr. ARENS. How cold?

The WITNESS. It was wintertime. Here on this shore it was about freezing temperature; but later, when we got out in the ocean, it was about 25 or 30 degrees below zero Centigrade. I don't know how much it is Fahrenheit.

Mr. ARENS. Did you have nice warm clothing to make the journey?

The WITNESS. Nobody gave us any clothes. We had just what we had from home.

Mr. ARENS. What were your accommodations on the ship?

The WITNESS. We were inside the ship and we had nothing—if somebody wanted to go to the rest room he had to go upstairs to the deck, on the deck on the ship.

Mr. ARENS. There was no rest room?

The WITNESS. Inside the ship there was not.

Mr. ARENS. And where were these several thousand people kept in the ship?

The WITNESS. Inside the ship, under the deck.

Mr. ARENS. Down in the hold?

The WITNESS. Down in the hold.

Mr. ARENS. What were the conditions there?

The WITNESS. There were many, many people downstairs, so that couldn't move.

Mr. ARENS. Did anybody die?

The WITNESS. Oh, they died; many, many people during this trip.

Mr. ARENS. Many died?

The WITNESS. This trip took about 6 days.

Mr. ARENS. What did they do when they died?

The WITNESS. These people who died, the Soviet soldiers dropped them just overboard in the ocean; they didn't identify who it was. Just they dropped them in the sea, in the ocean, in the water.

Mr. ARENS. Now, at the end of the 6 days' journey in this ship, what happened?

The WITNESS. I should add this, too, that during the 6 days I didn't drink any water, not one drop of water; and that is why I didn't eat anything, not only I, but many of the other prisoners.

Mr. ARENS. Was that because you didn't have the water available?

The WITNESS. Because it was so miserably organized, this whole thing, that you can't give for every man a jar. They give buckets of water inside and you—when you get over 3,000 men, everybody wants to drink and the water was spilled out and nobody could drink anything.

Mr. ARENS. All right, sir.

The WITNESS. And they gave us salt fish so we were terribly thirsty and exhausted, terribly. We arrived on the sixth day at Magadan, which is a nice little town. It is right across from Alaska, the same line.

Mr. ARENS. Up in Siberia, just across from Alaska?

The WITNESS. Yes.

Mr. ARENS. What happened there?

The WITNESS. When we arrived, there was already snow there, and there was big snow and it was very, very cold. Our clothes were wet inside from the transportation, and all the clothes were frozen on us, and we were so terribly thirsty that we ate snow all the way. We had to walk about 10 miles to our receiving camp and we ate snow during the way because we were so terribly dried out.

Mr. ARENS. How many people were there in this particular center where you had been taken?

The WITNESS. When we arrived at this center there were very few people, only the three thousand or four thousand people that was on our ship.

Mr. ARENS. Were there women, as well as men?

The WITNESS. Yes, sir; there were women, as well as men; yes, sir.

Mr. ARENS. What was the camp that you were then lodged in and what did you do there?

The WITNESS. This was a receiving camp, too; and here the first time they gave us brand-new clothes, cotton clothes, underwear, shoes, and they told us to keep these clothes, because we will not get any more.

From here they selected people for work in the coal mines, gold mines, and lead mines.

Mr. ARENS. Were these gold mines, coal mines, and lead mines in the immediate vicinity?

The WITNESS. No, they were not. They were about a thousand, five hundred miles radius from this camp.

Mr. ARENS. Were you selected to work in one of these places?

The WITNESS. No, fortunately I was not. I was very weak and I was already very sick. They put me in the hospital.

Mr. JACKSON. May I ask a question here?

You say you were sick and you were weak. What, do you recall, was your weight when you were taken as a boy in Budapest?

The WITNESS. Pardon?

Mr. JACKSON. How heavy were you?

The WITNESS. When I was taken?

Mr. JACKSON. Yes.

The WITNESS. From home?

Mr. JACKSON. Yes.

The WITNESS. I was about 60 kilograms which is about 130-140 pounds.

Mr. JACKSON. It is hard to relate it because you were growing during that period. But how much did you weigh when you were at this last camp?

The WITNESS. I was 40 kilograms, which is about 80 pounds, 90 pounds, I guess.

Mr. JACKSON. Down from 130 pounds as a boy of sixteen, to about 80 or 90 pounds?

The WITNESS. Yes.

Mr. JACKSON. You were how old at this time?

The WITNESS. This was all in 1946. I was sixteen and a half, seventeen years.

Mr. JACKSON. Thank you.

Mr. ARENS. All right, sir. What happened next with reference to yourself?

Mr. JACKSON. May I ask one question at this point? Did you hear from home or write to your people during this time?

The WITNESS. No, I had no opportunity to hear from anybody at home, and not only I, but even the Russian people who were living in Russia, didn't get any letters from their relatives, and the post was not working at this time in Russia.

Mr. ARENS. What happened to your father?

The WITNESS. My father died in Odessa in 1945.

Mr. ARENS. You learned that subsequently?

The WITNESS. I learned that from another Hungarian fellow who saw him die.

Mr. JACKSON. He was in a camp at the time he died?

The WITNESS. Yes, he was in this prison in Odessa. It was over there.

Mr. ARENS. Now, kindly tell us, if you please, the next significant occurrence. You have found yourself now in this reception center again, where you told us they were selecting people to work in these mines.

The WITNESS. Yes, I was. They put me in a hospital. The hospital was comparatively clean. There was enough water. We were never thirsty in the hospital. I was here about one month, and they shipped me to another hospital about 400 miles from this place, from Magadan, 400 miles north.

Mr. ARENS. Did they operate on you in the hospital?

The WITNESS. Not in this hospital. They operated on me where they shipped me.

Mr. ARENS. That was because of the injury that was inflicted on you en route in the ship to the place, was it not?

The WITNESS. Yes, it was; I had a bad back injury. In 1949 a fellow German prisoner operated on me, and I can thank him for my life, because I would have died, I am sure.

Mr. JACKSON. You say a fellow prisoner operated?

The WITNESS. Yes.

Mr. ARENS. How long were you in the hospital then?

The WITNESS. I was lucky, because I was in this hospital about until 1950. I could get a job in this hospital.

Mr. ARENS. You mean as a prisoner?

The WITNESS. As a prisoner.

Mr. ARENS. Assigned there?

The WITNESS. Yes. This hospital was specially for the prisoners.

Mr. ARENS. Your father was a medical doctor?

The WITNESS. Yes.

Mr. ARENS. You had a rudimentary knowledge of certain phases of medicine?

The WITNESS. Yes, and they were very short in medical personnel in this time, and I worked in this hospital in the pharmacy, and so I had here a better life, much better life, than the other prisoners had.

Mr. ARENS. Did you see the other prisoners as they came and went to the mines?

The WITNESS. Here I had the opportunity to see this terrible injustice and terrible thing what was going on in this time in the Soviet slave-labor camps. The people were exhausted. They died, many, many hundred thousand people in these camps. The roads over there were built on the bones of these poor people, and nobody cared about this.

Mr. ARENS. Did they have any uranium mines over there?

The WITNESS. I don't know this exactly, whether it was or not. After 1950 I was shipped to a mine. It was called a lead mine, but everybody knew that this is not lead, because it was so heavy, the stuff was, that we thought it was uranium. I am not sure.

Mr. ARENS. Did they fly it out of there in special planes?

The WITNESS. Yes. This compound right away they took in airplanes and they shipped it to inside Russia. I don't know where.

Mr. ARENS. Was it about 1950 that you were out of the hospital and in this mine?

The WITNESS. Yes, it was in 1950.

Mr. ARENS. And where did you work in the mine? where was the mine?

The WITNESS. I worked inside that lead mine with very primitive tools, and everything was made with hands, no special mine equipment. This time they had not. Now they have.

Mr. ARENS. What did you do in the mines?

The WITNESS. I pushed pushcarts and shoveled this compound. Later on I was again lucky. They found out that I understood some from medicine and they sent me in a forest to take care of some prisoners who were working over there in this forest.

Mr. ARENS. They sent you there as a type of medical practitioner, is that correct?

The WITNESS. Yes. First I had to work in this forest to cut woods, and to do the same job as the others did. But later on they found out that I understood some from this medicine, and I took care of these prisoners for the ill and for the sick there.

Mr. ARENS. Did the work in the forest follow your work in the mines? Was that the next slave-labor camp you were in?

The WITNESS. Yes.

Mr. ARENS. How long did you work in the mines?

The WITNESS. In the mines, I would say 4 months, I think, something like that.

Mr. ARENS. How long after that did you work in the forest?

The WITNESS. In the forest I worked until 1952, and from here I was freed.

Mr. ARENS. You had served your 8 years, is that correct?

The WITNESS. Yes, sir.

Mr. ARENS. Now, when you were freed, what happened?

The WITNESS. When I was freed, they put me in a little town—you can call it a town or a village, I don't know—there were a couple houses over there and it was a big factory, and they told me that I would have to work here and it is not allowed for me to go anywhere from this place.

Mr. ARENS. This was still in Siberia?

The WITNESS. Of course—in Siberia.

Mr. ARENS. You had served your 8 years and you were free from the slave-labor camp?

The WITNESS. Yes.

Mr. ARENS. But sent to a factory in Siberia to work?

The WITNESS. Yes. About 200 miles from this camp where I was.

Mr. ARENS. And how long did you work in this factory?

The WITNESS. In this factory I worked until 1955. Until 1955, May.

Mr. ARENS. And you were paid in the factory a small sum, were you not?

The WITNESS. Yes, I was paid here. Here I got the same salary as the other Russians, so-called free Russians.

Mr. ARENS. Please give us a word about that salary. What is the nature of the pay that they got in this factory?

The WITNESS. I should add this: that everybody who is working in the High North in High Siberia gets a higher salary like inside Russia, and so I got for a starting salary 880 rubies.

Mr. ARENS. What is that in American money, roughly speaking?

The WITNESS. This is very hard to translate into Hungarian money.

Mr. ARENS. In American money.

The WITNESS. For 800 rubles you could buy, let's see, you could buy a no-good suit.

Mr. ARENS. And that 800 rubles was for working how long?

The WITNESS. For 1 month.

Mr. ARENS. For 1 month you got 800 rubles?

The WITNESS. Yes.

Mr. ARENS. With this you could buy a no-good suit?

The WITNESS. Yes.

Mr. ARENS. How much food would that 800 rubles a month give you?

The WITNESS. Two pounds of butter, cost 30 rubles—32 rubles was the price.

Mr. ARENS. 32 rubles for 2 pounds of butter?

The WITNESS. Yes.

Mr. ARENS. Was your 800 rubles that you received for your labor in this factory adequate to maintain yourself?

The WITNESS. It was exactly enough that took care of food and the apartment.

Mr. ARENS. Could you leave the community to which you were assigned?

The WITNESS. No, I could not. If I wanted to leave I had to ask the commandant from this place, and to ask him that he allows me to leave this place.

Mr. ARENS. Were there guards around the community?

The WITNESS. No, there were not. Of course, in this community there were other labor camps, but I was not in the labor camps, and the guards didn't watch me.

Mr. ARENS. How long were you in this community, working in this factory to which you were assigned?

The WITNESS. I told you—about two and a half years. I worked here in a tractor factory. They made this tractor. It is an exact copy from the tractors we are using here in the United States, this particular tractor.

Mr. ARENS. Please tell us when it was that you were permitted to leave the factory community to return to your homeland.

The WITNESS. I wrote many times to the Soviet Supreme Court that I wanted to go home; that now I served my 8 years, or already it was 10, and I didn't know anything about my relatives in Hungary. I couldn't get any letter from them, and I wrote them many times. I should add this, too, that in these times Stalin died already. It was Khrushchev in the government, and I wrote many times to the supreme court, and they didn't answer me never. Once I got a letter from the Hungarian Embassy in Moscow. In it they sent all of my papers to Budapest, Hungary, to manage my transportation to Hungary.

Mr. ARENS. You were saving money from these 800 rubles in order to pay your transportation back when that day would arrive?

The WITNESS. Yes; I knew that my transportation will not be paid, because in Russia they don't pay that, and I had to save money for my transportation.

Mr. ARENS. What year was this that you were finally released from this city or this community?

The WITNESS. 1955.

Mr. ARENS. Now, I suggest, Mr. Chairman, if it is agreeable with yourself and the committee, it will be well to give the witness a few moments rest; and then we will resume, if you please, Mr. Chairman, with his experiences in the Hungarian revolution.

Mr. WILLIS. I notice that someone in the audience has a camera. I know there is no evil motive behind it, but I caution you no pictures are to be taken.

Mr. WILLIS. We will stand in recess for a few moments.

(Subcommittee members present: Representatives Willis and Jackson.)

(At this point a short recess was taken, after which the hearing was resumed.)

(Subcommittee members present: Representatives Willis and Jackson.)

Mr. WILLIS. I want to repeat the admonition, sincerely given: Please, no pictures. You can see for yourself the reason we make this request of all members of the press and all our guests in the audience. If a flash bulb or anything is exhibited, I will have to ask the marshal to retire anyone who does that.

Proceed.

Mr. ARENS. Just before the recess you had told us, in essence, that you concluded a period of service of some 8 years in slave-labor camps and a period of, I believe, 2 years—

The WITNESS. Yes.

Mr. ARENS. —in which you were assigned to a factory in Siberia?

The WITNESS. Yes.

Mr. ARENS. And that you were able to eke out of your wages in the factory sufficient sums to pay your transportation back to your native Hungary, to Budapest?

The WITNESS. Yes.

Mr. ARENS. I suggest, if it is agreeable with you in the sequence of your testimony, that you resume by telling us what transpired immediately upon your arrival at Budapest?

Mr. WILLIS. What year are we in now?

The WITNESS. We are in 1955, in June.

Mr. WILLIS. And you left Hungary when?

The WITNESS. 1945, February.

Mr. WILLIS. All right.

The WITNESS. I arrived home. My mother didn't know about me, anything, during these 10 years, only that I was in Moscow. I was in Moscow about 9 days and from Moscow I have sent my mother a telegram that I am alive and I will be home soon.

Mr. ARENS. Excuse me just a moment. I don't like to disrupt the theme of your testimony. You say you were in Moscow 9 days. That is, en route back to Budapest?

The WITNESS. Yes, during the trip.

Mr. ARENS. Was there anything of significance that crossed your mind, or anything of significance when you visited Moscow on your way back?

The WITNESS. Yes, I had opportunity to look around in this town. From the outside, Moscow is a quite nice town, clean, wide streets; but if you will look from inside, the houses and the living conditions, the people, this is just terrible. Here in the United States the American people are used to lights; they are living in large apartments with bathrooms, with television, and with cars. I must tell you that this is not in Russia. They are way behind the United States. I think if I tell 50 years, I will tell the truth, in these living conditions. Of course, maybe they have Sputnik but I think this is another question.

Mr. ARENS. Then you arrived in Budapest. Kindly resume the theme of your testimony at that point, please.

The WITNESS. When I arrived home I couldn't find a job. First of all, the people in Hungary were very sympathetic to me, but the bosses from all these factories and working places were afraid to hire me because I was for 10 years in the slave-labor camps.

Mr. ARENS. Your mother and another relative were there in Budapest when you arrived?

The WITNESS. Yes.

Mr. ARENS. Still living there?

The WITNESS. Yes, still living in the same apartment. They didn't bother her never.

So I drove a truck. I drove a truck about one and a half years, until the Hungarian revolution broke out. I worked 16 hours a day, and the wages translate in American money is about one pack of cigarettes an hour.

Mr. ARENS. I wonder if you could state that again. I don't think it was very distinct for our reporter.

The WITNESS. The wages that I could earn as a truck driver, to translate in American money, was about one pack of cigarettes in an hour.

Mr. ARENS. That would be equivalent to about twenty-five cents an hour in American money, apparently.

The WITNESS. Just about. I got 3 forints an hour. For 3 forints you could get a pack of cigarettes.

Mr. ARENS. Go right ahead, please, sir.

The WITNESS. I worked as a truck driver until 1956, October the 23d, when the Hungarian revolution broke out against the Soviet suppression.

Mr. ARENS. Can you keep your voice up just a little, please?

The WITNESS. I worked until 1956, October the 23d, until the Hungarian revolution broke out.

Mr. ARENS. Please tell us about that now, from the standpoint of your own experiences.

The WITNESS. I worked in the nightshift on this date when the revolution broke out, and I didn't know anything about the revolution or what was going on. I knew that there was a demonstration in the streets, but I didn't know anything about that because I was working; and on the night of October 23, I wandered across the bridge through the River Danube, and the Hungarian Freedom Fighters stopped me and they wanted to take away my truck because they needed it. I didn't give it to them. They told me, "All right then, come you with us."

Mr. WILLIS. They said what?

The WITNESS. Said, "If you don't want to give us the truck," they told me, "then go fight with us," with the Freedom Fighters.

I told them "All right," and they sent me to a factory which is the biggest factory in Hungary. This is right in Budapest.

Mr. WILLIS. You mean the Freedom Fighters sent you there?

The WITNESS. Yes—when the truck they sent me. They sent me in this region where I was living, where there are the workers from this big industry center, and these workers were already waiting in trucks. There were already many trucks over there, and we were carrying all these workers inside the town in Budapest. I made several trips back and forth, and I don't know how many I brought, about 150 people.

Mr. ARENS. Would you please raise your voice a little? We are having some difficulty hearing you.

The WITNESS. I brought about 150 people to inside the town. When I brought them in, there was already shooting in Budapest. They were already there. The Russians came in; and after short fighting, the Russians went out from Budapest, because they had, I think, quite a few troubles with their garrison over there. They didn't want to fight. I saw myself—I saw a tank division of about 40 or 50 tanks who didn't want to fire on the Hungarian Freedom Fighters. And of course, these tanks were all taken out from Budapest.

Mr. ARENS. I want to be sure the record is clear on this. Are you saying, in essence, that the Russians, after the first volleys were fired—

The WITNESS. Yes.

Mr. ARENS. —retired their troops because a number of their troops and a number of the tank commanders did not want to fire against the helpless Hungarians?

The WITNESS. Yes.

Mr. ARENS. Is that correct?

The WITNESS. Not helpless Hungarians. They sympathized with the Hungarians. This was the garrison that was stationed in Hungary.

Mr. ARENS. The garrison of Russian troops in Hungary was sympathetic to the Hungarian people?

The WITNESS. Yes.

Mr. ARENS. All right, sir. Proceed, if you please.

The WITNESS. And this was, of-course, partly because, I think, even the Russians didn't know what happened in Budapest. It happened from one place to another; so we thought that we were free, and we called to the free nations, the first thing, to the United States, for help. And we got everything but weapons. We got medicine, we got food, we got clothes, but weapons we didn't get.

Everybody in Hungary was hoping that the Western World would help us because we knew very well that we cannot be free without any help from the Western countries.

We were free until October 4, 1956, October 3—excuse me, October 3, in the night, in the morning.

Mr. ARENS. Are you sure you don't mean November?

The WITNESS. November. Excuse me. Yes, November.

Mr. WILLIS. Let's get the record straight. As I understand it, the revolution broke out on October 23.

The WITNESS. October 23, yes.

Mr. WILLIS. And you were, free, until November 3.

The WITNESS. Until November 3, yes.

Mr. WILLIS. A little over 2 weeks.

The WITNESS. About. On November 3 they came into Budapest. 4,000 fresh Soviet Mongol tanks from inside Russia.

Mr. ARENS. Did you say troops or tanks?

The WITNESS. 4,000 Mongol tanks. The tanks were 4,000. They ran into the town. There were, of course, many destroyed from these tanks, but 4,000 tanks—I don't know—if you can imagine how strong can be 4,000 tanks. This is just a terrible force.

Mr. ARENS. About how many of the Hungarians were massacred by those tanks?

The WITNESS. As to the Hungarian losses, I heard they were about 25,000. There were 25,000 people shot for nothing, because they wanted only freedom, and this is typical Russian Soviet colonialization, what they made in their country and all these satellite countries now.

Mr. JACKSON. May I ask a question, C. G. G. How did the Freedom Fighters manage to destroy tanks?

The WITNESS. To fight in a town, in a big town, with tanks, is very difficult, because the driver of the tank cannot see farther than ahead of him and he cannot see on the houses, on the tops of the houses; and if you just drop on the tank a bottle of gasoline, it burns the tank, and the whole tank burns, and they can't do anything. So I heard that there were destroyed about 700 Soviet tanks in this battle over there. I have several pictures with me from this whole massacre, what they did.

Mr. ARENS. You took those pictures yourself?

The WITNESS. Yes, I did.

Mr. ARENS. You have pictures with you, showing the terrible devastation there in Budapest, do you not?

The WITNESS. Yes.

Mr. ARENS. Do you have also pictures showing the destruction in the very home in which you were living?

The WITNESS. Yes.

Mr. ARENS. Now, we are in a period in which the Russian tanks have inflicted 25,000 odd casualties—

The WITNESS. Yes.

Mr. ARENS. Upon the Freedom Fighters and the Hungarians?

The WITNESS. Yes.

Mr. ARENS. And have, I take it, resumed control of Budapest?

The WITNESS. Yes; they controlled all the important places, the post office, the Parliament, and of course, everything.

Mr. ARENS. And then tell us, if you please, what you did, after the resumption of control.

The WITNESS. I saw that it is not reasonable to fight against these 4,000 tanks, and it will do me no good from this, and I saw we didn't get any help from the United Nations. I decided to escape by the first chance, to the free world.

Mr. ARENS. Tell us the pattern of the escape, if you please.

The WITNESS. On November the 21st—

Mr. ARENS. What year?

THE WITNESS. 1956—I and a couple more Freedom Fighters—and I didn't know them before, I learned of them only during this period of time—decided to escape. I stole a truck, and I drove to the Hungarian-Austrian border. We were stopped many times from the Russians, but since I speak perfect Russian and fluently, and I know the spirit of these Russian soldiers, I talked to them and they let us go. I gave all of them a bottle of vodka, and they were very happy. They let us go.

And right on the Austrian border, there was a Russian tank division, and here the vodka didn't help. They stopped us and they forced everybody out from the truck, and we told them that we are going to work right on the border in this Government's interest and we are working for the People's nation, and such. We told them, and they didn't believe that. It was Russian sergeant, I think it was a sergeant. He told that he will radio to his headquarters and let them find out who we are. This was night time, about 11 o'clock in the night, and I told this Russian that we are very tired, let us go, and I had a paper and I can prove myself that we are all right, we are not enemies; and I talked to him so much that probably he was tired, too, or what, I don't know, but he told me, "All right, go ahead."

So we drove about a half mile and we met this Russian chief that came for us, but the chief didn't know that we were the fellows that they are looking for, and so we drove through the border and we arrived in Austria. We were very happy that this was the first step in the free world, and I went to the United States Embassy, the first thing, in Vienna and I asked asylum from the Austrian Government. They were very kind to us, and the United States Embassy gave me a quota on the Refugee Program and in 3 weeks, December 18, I arrived in the United States from there. I am here very happy, and I like this country very much.

MR. ARENS. And you are living presently in the South?

THE WITNESS. Yes.

MR. ARENS. I have just 2 or 3 questions of a general nature. I hold in my hand a very fine magazine, published and circulated here in the South, called The Atlantan Magazine.

THE WITNESS. Yes.

MR. ARENS. A very fine magazine, we understand. In this magazine, one of the roving editors, or someone on the magazine, had an interview with an Atlanta Communist on certain of the problems connected with this operation; and the interview with this Atlanta Communist is published in the magazine. I would like to get your response to some of the questions which were posed to this particular American Communist.

THE WITNESS. Yes.

MR. ARENS. I will give you the questions and then I will give you the answer, and see if you agree with the answer that was given.

Question: Do you seriously believe Russia, having once established dominance, would surrender her sovereignty over these nations?

The answer is: "Yes."

Question: Even though all previous evidence discloses a notable lack of willingness on the part of Russia to surrender any hold it might have on a satellite nation?

The answer is:

Yes. And I resent your use of the term "satellite nations." Such countries as Poland, Hungary, and others have communist governments because the people themselves have so chosen.

Now, Mr. Witness, what is your reaction to that? Are the people of Poland, Hungary, and the other what we would call Iron Curtain nations, in sympathy with the regime which is in power?

The WITNESS. Those people have not chosen the Communist Government over there. They didn't choose it because they hadn't the choice. The Communist system is so that you can't choose; you can vote only for one man, and that is all what you can do, and there is no reason not to vote, because you get only in trouble. So they get, of course, 99 1/2 percent in votes. So I can tell you that from this.

Mr. WILLIS. You have only one candidate?

The WITNESS. Yes.

Mr. WILLIS. Only one party?

The WITNESS. Only one party, only the Communist Party, nothing else; only the Communist Party in these Communist blocs. In Russia, it is only the Communist Party, nothing else. And I can tell you that these people in eastern European countries are very hopeful that once the Western states will wake up to recognize this terrible danger what is now in the world.

Mr. ARENS. I should like to ask you—or call your attention to another question and answer, which was posed to a local Communist here, according to this very fine magazine. They asked him this—He is an American Communist:

How do you explain the actions of Russia in Hungary, when the revolt of the Hungarian people was so ruthlessly stamped out with the aid of Russian soldiers?

This American Southern Communist gave this reply:

... It was not a revolt of the Hungarian people, but a disturbance created and fostered by Fascist elements within Hungary. In fact, Russia was protecting the people of Hungary by helping to put down these disorders.

On the basis of your background and experience, what observation would you make in response to that question?

The WITNESS. This man who gives this interview, he is a man. I think, who is reading only Communist propaganda and he believes it, you just can't tell him what is the truth, because it is no reason to him, because he is a fanatic. So if you tell him this is not true, he never will believe that; but this was a Fascistic uprising in Hungary, he tells that from the Communist propaganda. Everything which is not Communist is Fascistic. Even they say America is Fascistic and they say that France is Fascistic, everything is Fascistic except the Communists.

Mr. ARENS. Now, Mr. Witness, just one final question: In the course of the last 2 days here we have had just a sampling before this committee of hard-core zealots of the Communist conspiracy in the United States. I don't believe you have had the occasion to hear all of their testimony before this committee.

The WITNESS. No, I have not.

Mr. ARENS. They are working zealously, night and day, fanatically, in the interests of the international Communist movement. Do you, having lived in a Communist regime under the dictatorship of communism, have any message you would like to leave with these Ameri-

can Communists who are working feverishly on behalf of the international Communist movement.

The WITNESS. I think that these people are honest people. I think that these people do not know what really Soviet communism is. They support an idea that is false, that is not true, that is only the propaganda, that is all lies; and they believe that. And I think that we can help only this way, as this man, whose questions and answers you read, that you should tell them really the truth.

Yesterday I was here, briefly, and I heard a couple of the witnesses' testimony in the hearings, and I am sure that there were a couple of gentlemen here, and they believe that really the Communist system is better than the system of the United States of America, but they don't know. They read only books from these Communist writers. They never were inside Russia or they never were in a satellite country like Poland, Hungary, China, and you can call all of them. These people do not know what they support, and this is my feeling about these people. I think that they are not right, that now in this difficult situation what is now in the world, that they oppose the United States.

Mr. ARENS. You have not described it, but you were able, also, to procure the escape of your mother from Hungary, were you not?

The WITNESS. Pardon me?

Mr. ARENS. Your mother.

The WITNESS. Yes.

Mr. ARENS. She has likewise, by certain devices, escaped from Hungary?

The WITNESS. Yes.

Mr. ARENS. And she is likewise living with you in the South?

The WITNESS. Yes, she is.

Mr. ARENS. But you do have certain connections over there and certain relatives?

The WITNESS. Yes.

Mr. ARENS. Whom you must protect?

The WITNESS. Yes.

Mr. ARENS. Mr. Chairman, I respectfully suggest that so far as the staff interrogation is concerned, that will conclude our interrogation of this witness.

Mr. WILLIS. Well, sir, I think you have made a great contribution to this subcommittee and, through us, to the Congress of the United States and to the people.

I wish more people throughout the United States, not only the few here present in Atlanta, could have had the opportunity to hear your story about the machinations of the Communist conspiracy. We are very grateful to you and wish you much happiness in this area.

The WITNESS. Thank you.

Mr. WILLIS. And I hope that you will have occasion to talk to people and tell them what this thing is all about, that we, of this committee, are trying to fight.

Mr. JACKSON. Mr. Chairman, I certainly want to associate myself with what you have said with respect to testimony given by this witness, and also to agree that it is a shame that a great many more people cannot see the side of the Soviet State and the Soviet system that is sometimes hidden from view by the smiling face of the Soviet ambassador to the United States.

I have a couple of brief questions: As a 16-year-old boy—and you were 16 years old at the time you were taken by the Soviet Secret Police—

The WITNESS. Yes.

Mr. JACKSON. Had you taken any part in politics?

The WITNESS. Before?

Mr. JACKSON. Before that.

The WITNESS. No, never. I went to school.

Mr. JACKSON. You attended no anti-Communist rallies or meetings?

The WITNESS. No.

Mr. JACKSON. What was your principal interest in life at that time?

The WITNESS. Well, girls.

Mr. WITNESS. I think you will get along all right in the South.

Mr. JACKSON. During the many years of your confinement in and out of concentration camps, slave-labor camps, you must have given a considerable amount of thought to the question of why the Soviets would take a child of 16 and send him to slave-labor camps; did you not?

The WITNESS. Yes, I have thought many times about this question myself, and I have the answer. They needed laborers. They hadn't any. The whole Soviet Union was destroyed, and I should add this, too, that the Germans did terrible things in the Soviet Union. They just killed many, many people over there; and the Russians, they just hated everything that is behind the Russian border. These Russian soldiers were all very mad, and this was a reason too, I realized, when I asked myself why this happened. And so this is my answer.

Mr. JACKSON. I am sure that you have read of the proposals for a summit conference—

The WITNESS. Yes.

Mr. JACKSON. As between certain nations of the Soviet bloc and the free world, including the United States.

What in your opinion will be the effect upon enslaved millions of people behind the Iron Curtain if such a conference takes place? What will they interpret it to mean, in your opinion?

The WITNESS. Such a conference, it depends in what forum that you talk, and I didn't understand quite your question.

Mr. JACKSON. Well, it is very difficult to arrive at any decision as to what is to be discussed. That is one of the big problems.

The WITNESS. If there will be a talking about the special question, like Lebanon or like the Middle East, or something like that, I don't think so, that it could be any good. I think this is my opinion because even if the Russians will step back one step, it is very naive to believe them that they will somewhere else not step two steps forward. And this is my opinion about the summit conference.

Of course, it is never a bad thing to talk with each other, but now the situation is much worse, and I don't know what is—I am not a politician and I am not a military man—I don't know what we can do in the Middle East. How can we support over there some government or some troops, how can we get supplies for them, I don't know that, so I don't want to tell anything about that.

Mr. JACKSON. I reiterate the expression of appreciation which the chairman has voiced, and will conclude by saying that if the American people are aware, to any considerable degree, of the true nature

of the Communist conspiracy and of its operation behind the Iron Curtain and elsewhere throughout the world, it is due in large part to people like yourself, who do not have to speak theoretically about communism, but speak out of bitter experiences with it.

I hope, too, that you will find every happiness for yourself and your mother in the United States, and close by saying that I am glad you are on our side, and not on the other.

The WITNESS. Thank you.

Mr. ARENS. Mr. Chairman, that will conclude the presentation of witnesses during this hearing; and I respectfully suggest that before you proceed with your closing statement, we permit Mr. Bonora to escort the witness from the hearing room so he will be unavailable for any further scrutiny.

Mr. WILLIS. Will you do that now, before the closing statement?

In concluding the hearings, I should like to make a few brief observations respecting the significance and accomplishments of this particular investigation.

In the first place, we have seen here a pattern of Communist activities and techniques which verifies and confirms similar patterns which we have been observing elsewhere in the Nation.

There has been developed here new and convincing evidence regarding the problem of Communist propaganda, both foreign and domestic. There has been revealed factual information respecting strategy and tactics of Communists in maneuvering into groups and organizations which they seek to influence in the Communist objectives.

One of the world's top Communists, a former instructor in the Lenin School of Political Warfare, Georgi Dimitrov, once said:

As Soviet power grows, there will be a greater aversion to Communist parties everywhere. So we must practice the techniques of withdrawal. Never appear in the foreground; let our friends do the work.

Referring to the front organizations that have been sprouting by literally hundreds in America, we have a booklet for those who are interested, giving a list of all of these front organizations. It is an official publication, available to anyone who cares to write to our staff director.

Finally, there has been developed information which should stand as a warning to the South, namely, that as the textile and other industries are developed in the South, there is the ever-present threat of Communist penetration.

As Chairman Walter stated in opening the hearings, we have not tried to probe beyond the development of facts which show a pattern of operations; we have not sought to run down all possible leads. We believe that the evidence which is in our records now, however, does add materially to the fund of information already available as a foundation for legislative action.

There is a collateral result, moreover, from hearings of this type, which I believe will have a salutary and important effect, and it is this: that the Communist Party operation is real; it is a continuing, menacing, dynamic force of intrigue and subversion.

Communism is not merely a philosophical concept. The witness who testified respecting his harrowing experiences this morning in the Communist slave labor camps portrayed communism in action. I would not attempt to portray more vividly the realities of communism than he has done from the witness chair, under oath.

Here are recent words of J. Edgar Hoover, Director of the Federal Bureau of Investigation, and I quote his words:

Public apathy is the sure way to national suicide—to death of individual freedom. It allowed the Communists to penetrate and make satellites of once-free countries, and it is presently enabling them to honeycomb and weaken the structures of the remaining countries, and there is today a terrifying apathy on the part of Americans toward the deadliest danger which this country has ever faced. Some of that apathy is deliberately induced.

He continues—this is J. Edgar Hoover speaking, one of the greatest Americans of all time:

The Communist Party in the United States is not out of business; it is not dead; it is not even dormant. It is, however, well on its way to achieving its current objective, which is to make you believe that it is shattered, ineffective, and dying. When it has fully achieved this first objective—

talking about throwing the dust in your eyes, as though the Communist Party is dormant in the United States, he says, when it has achieved that objective:

It will then proceed inflexibly toward its final goal.

and here are his concluding words:

Those who try to minimize its danger are either uninformed or they have a deadly axe to grind.

That is what J. Edgar Hoover said.

We on the committee will return to Washington with the information which has been developed here and use it as part of the fund of knowledge which we are gaining to assist us in the discharge of our duties, which, under a mandate of the Congress are, in essence, to maintain a continuing surveillance over the operation of our various security laws and to recommend, when necessary, amendments to those laws or the enactment of new ones.

Before concluding, I should like to express the thanks of the committee to Armando Penha, who unselfishly and patriotically served his country by working as an undercover agent on behalf of the Federal Bureau of Investigation in the Communist Party.

Without such men as this brave young man, the work of the Federal Bureau of Investigation and our committee in the field of investigation of subversion would be impossible. He has rendered an outstanding service, and we are pleased to commend him publicly for it.

Also on behalf of the committee, I would like to pay tribute to the Georgia Bureau of Investigation, Attorney General Eugene Cook, and to Mr. Irving Fishman of the Bureau of Customs. These men have likewise contributed substantially to the success of our work.

I would not presume to express appreciation or thanks to the witnesses before this committee who have refused to cooperate, most of whom have been identified under oath as members of the Communist Party. By indirection they have likewise, unwittingly perhaps, given the committee very valuable information, whether they know it or not, because we can match up what they said or did not say, or the way they said it, to the pattern of other hearings we have had.

We would like to express our thanks to Federal Judge Frank A. Hooper, who has most courteously made available to us this very fine courtroom. We would also like to thank United States Marshal William C. Littlefield and his capable and courteous deputies.

Finally, we would like to express our sincere thanks to the members of the press, and of the radio and television profession, who have been most courteous and cooperative.

Mr. Jackson, would you care to add some extemporaneous remarks? Mr. Jackson, Nothing, I think. Mr. Chairman, can be added to what you said, except we on the subcommittee all appreciate, I am sure, the very warm reception we had in Atlanta. I don't know whether it is the very hospitable attitude of this City or not; but even the most cantankerous of the witnesses didn't begin to measure up to some we have had elsewhere, and they will probably be chided by the party for their dereliction in this regard. They didn't do a very good job of being mean. With that, Mr. Chairman, I simply want to say a word of personal thanks to all those you have thanked.

Mr. WILLIS. This will conclude the hearings in Atlanta.

(Whereupon, at 12 o'clock noon, Thursday, July 31, 1958, the hearings in Atlanta, Georgia, were concluded.)

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GOVERNMENT'S EXHIBIT No. 2

Case No. 21756

Admitted January 20, 1953

85TH CONGRESS } HOUSE OF } REPORT
2d Session { REPRESENTATIVES { No. 2583

PROCEEDINGS AGAINST FRANK WILKINSON

August 13, 1958. Ordered to be printed

Mr. WALTER, from the Committee on Un-American Activities, submitted the following

REPORT

CITIZEN FRANK WILKINSON

The Committee on Un-American Activities, as created and authorized by the House of Representatives through the enactment of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 85th Congress, caused to be issued a subpoena to Frank Wilkinson to be and appear before said Committee on Un-American Activities or a duly authorized subcommittee thereof, of which the Honorable Francis E. Walter is chairman, on Wednesday, July 30, 1958, at ten o'clock a.m., at Court Room 1, 3d Floor, Old Post Office Building, Atlanta, Georgia, then and there to testify touching matters of inquiry committed to said committee; and not to depart without leave of said committee. The subpoena served upon the said Frank Wilkinson is set forth in words and figures as follows:

UNITED STATES OF AMERICA

CONGRESS OF THE UNITED STATES

TO FRANK WILKINSON, *Greeting*:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to be and appear before the Committee on Un-American Activities of the House of Representatives of the United States, or a duly appointed subcommittee thereof, on Wednesday, July 30, 1958, at ten o'clock a. m., at Court Room 1, 3d Floor, Old Post Office Building, Atlanta, Georgia, then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee.

[fol. 299] HEREOF FAIL NOT; as you will answer your default under the pains and penalties in such cases made and provided.

To U. S. Marshal, to serve and return.

GIVEN under my hand this 22d day of July, in the year of our Lord, 1958.

FRANCIS E. WALTER, *Chairman*.

The said subpoena was duly served as appears by the return made thereon by the United States Marshal, who was duly authorized to serve the said subpoena. The return of the service by the said United States Marshal being endorsed thereon, is set forth in words and figures as follows:

Subpena for Frank Wilkinson, Room 231, Atlanta Biltmore Hotel, Atlanta, Georgia, before the Committee on the 30th day of July 1958.

I made service of the within subpoena by serving a copy on him personally in his room at 3:25 P. M. at the Atlanta Biltmore Hotel, Atlanta, Ga., the within named Frank Wilkinson at Atlanta Biltmore Hotel, Atlanta, Georgia, room 231, at 3:25 o'clock, p. m., on the 23d day of July, 1958.

Dated July 23, 1958

W. G. Littlefield, United States Marshal

By: Leonard G. Herndon, Chief Deputy.

The said Frank Wilkinson, pursuant to the said subpoena, and in compliance therewith, appeared before a subcommittee of the Committee on Un-American Activities on July 30, 1958, to give such testimony as required under and by virtue of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 85th Congress. The said Frank Wilkinson having appeared as a witness and having been asked the questions, namely:

Are you now a member of the Communist Party?

I should like to display this document to you and ask you whether or not you made the calls to the places indicated in the document at the time revealed by the document.

Are you now the principal driving force, the leader, of the Emergency Civil Liberties Committee?

which questions were pertinent to the subject under inquiry, refused to answer said questions, and as a result of said Frank Wilkinson's refusal to answer the aforesaid questions, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of a subpoena served upon the said Frank Wilkinson.

The record of the proceedings before the subcommittee on July 29, 1958, insofar as it is pertinent to the appearance of the witness Frank Wilkinson on July 30, 1958, is set forth in fact as follows:

[fol. 300] TUESDAY, JULY 29, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Atlanta, Ga.

PUBLIC HEARING

A subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:07 a.m., in the Courtroom, Old Post Office Building, Atlanta, Ga., Honorable Francis E. Walter (the chairman) presiding.

Committee members present: Representatives Francis F. Walter, of Pennsylvania; Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; and Donald L. Jackson, of California.

Staff members present: Richard A. Lens, staff director, and George Williams and Frank Bonora, investigators.

The Chairman. The committee will be in order.

Let there be incorporated in the body of the record the Resolution of the Committee on Un-American Activities authorizing and directing the holding of the instant hearings here in Atlanta.

(The information follows:)

BE IT RESOLVED, that a hearing by the Committee, or a subcommittee thereof, to be held in Atlanta, Georgia, or at such other place or places as the Chairman may designate, on such date or dates as the Chairman may designate, be authorized and approved, including the conduct of investigations deemed reasonably necessary by the staff in preparation therefor, relating to the following subjects and having the legislative purposes indicated:

1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

(a) To obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepare to enact remedial legislation in the National

Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

3. Any other matter within the jurisdiction of the Committee, which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

The Chairman. Let there likewise be incorporated in the body of the record the order of appointment by myself of the subcommittee to conduct the hearings.

[fol. 301] (The information follows:)

June 24, 1958.

To: Mr. Richard Arens
Staff Director
House Committee on Un-American Activities

Pursuant to the provisions of law and the rules of this Committee, I hereby appoint a subcommittee of the Committee on Un-American Activities, consisting of Representative Edwin E. Willis, as Chairman, and Representatives William M. Tuck and Donald L. Jackson, as associate members, to conduct hearings in Atlanta, Georgia, Tuesday, Wednesday, and Thursday, July 29, 30, and 31, 1958, at 10:00 A. M., on subjects under investigation by the Committee, and take such testimony on said days or succeeding days, as it may deem necessary.

Please make this action a matter of Committee record.

If an Member indicates his inability to serve, please notify me.

Given under my hand this 24th day of June, 1958.

Francis E. Walter, Chairman,
Committee on Un-American Activities

Representative Francis E. Walter, chairman of the full committee presided over the hearing and made the following statement:

The hearings which begin today in Atlanta are in furtherance of the powers and duties of the Committee on Un-American Activities, pursuant to Public Law 601 of the 79th Congress, which not only establishes the basic jurisdiction of the committee but also mandates this committee, along with other standing committees of the Congress, to exercise continuous watchfulness of the execution of any laws the subject matter of which is within the jurisdiction of the committee.

In response to this power and duty, the Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater men-
 act than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core,

disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism.

[fol. 302] We know that the strategy and tactics of the Communist Party are constantly changing for the purpose of avoiding detection and in an attempt to beguile the American people and the Government respecting the true nature of the conspiracy. As we on the Committee on Un-American Activities seek to develop factual information on these changing strategies and tactics for our legislative purposes, we are constantly met with numerous and unfounded charges respecting the nature of our work and our objectives. Such charges will not dissuade us from our duty. We seek the facts and only the facts. Insofar as it is within the power of this committee, as a part of the United States Congress, we shall obtain the facts and we shall do so within the framework of carefully prescribed procedures of justice and fair play.

I have long felt that the effectiveness of this committee appears to be in direct ratio to the volume of attack against it which is waged by the Communist Party and those under Communist discipline. Accordingly, I was interested to take note some several months ago of the intensified activity against the Committee on Un-American Activities and the Federal Bureau of Investigation which is now being promoted by the Communist Party. This campaign was the subject of a special booklet which the committee issued entitled "Operation Abolition." I was somewhat gratified to receive a letter from Mr. J. Edgar Hoover, Director of the F. B. I. in regard to this booklet, part of which letter reads as follows:

This booklet depicts another example of the apparent ease with which the Communists have been able to enlist the support of misguided individuals to assist them in obscuring their subversive workings. Certainly the real meaning of civil liberties is not understood by these Communist apologists.

Your Committee's role in safeguarding our freedoms is well known to every patriotic citizen, and real Americans are not going to be fooled or misled by efforts to discredit your vital task.

Preliminary investigations by the staff of this committee indicate that the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North.

May I emphasize that the purpose of the committee here in Atlanta is to develop facts with reference to a pattern of operation and not to attempt to exhaust the subject matter. We have not subpoenaed witnesses for these hearings merely for the sake of exposure or to put on a show. We are engaged in the serious business of tracing the operations in the United States of a world-wide conspiracy which is determined to destroy us. Should we attempt to interrogate in these hearings even a significant percentage of all possible witnesses on whom we have lead information regarding Communist activity in the South, we would be here for many months to the neglect of our work elsewhere.

It is a standing rule of this committee that any person identified as a member of the Communist Party during the course of the committee hearings will be given an early opportunity to appear before this committee, if he desires, for the purpose of denying or explaining any testimony adversely affecting him. It is also the policy of the committee to accord any witness the privilege of being represented [fol. 303] by counsel; but within the provisions of the rules of this committee, counsel's sole and exclusive prerogative is to advise his client.

I would remind those present that a disturbance of any kind or an audible comment during the hearings will not be permitted. This is a serious proceeding in which we are earnestly trying to discharge an important and arduous duty with the general objective of maintaining the security of this great Nation.

The record of the proceedings before the subcommittee on July 30, 1958, during which Frank Wilkinson refused to

answer the aforesaid questions, is set forth in fact as follows:

WEDNESDAY, JULY 30, 1958

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Atlanta, Ga.

PUBLIC HEARING

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10 a. m. in the Courtroom, Old Post Office Building, Atlanta, Ga., Honorable Edwin E. Willis (chairman of the subcommittee) presiding.

Committee members present: Representatives Edwin E. Willis, of Louisiana; William M. Tuck, of Virginia; and Donald L. Jackson, of California.

Staff members present: Richard Arens, staff director, and George Williams and Frank Bonora, investigators.

Mr. Willis. The subcommittee will please come to order.

Counsel, will you call your first witness?

After hearing the testimony of one other witness, Frank Wilkinson was then called before the committee.

Mr. Arens. Frank Wilkinson, kindly come forward.

Mr. Willis. Please raise your right hand. Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Wilkinson. I do.

TESTIMONY OF FRANK WILKINSON

Mr. Arens. Kindly identify yourself by name, residence, and occupation.

Mr. Wilkinson. My name is Frank Wilkinson.

Mr. Arens. And your residence, please, sir?

[fol. 304] Mr. Wilkinson. As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee.

Mr. Arens. And your occupation, please, sir?

Mr. Wilkinson. As a matter of personal conscience and responsibility, I refuse to answer any questions of this committee.

Mr. Arens. You are appearing today in response to a subpoena that was served upon you by the House Committee on Un-American Activities?

Mr. Wilkinson. I am.

Mr. Arens. And you are not represented by counsel?

Mr. Wilkinson. I am not.

Mr. Arens. You know you have the privilege of counsel?

Mr. Wilkinson. I do.

Mr. Arens. Mr. Wilkinson, are you now a member of the Communist Party?

Mr. Wilkinson. As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee.

Mr. Arens. Now, sir, I should like to make an explanation to you of the reasons, the pertinency, and the relevancy of that question and certain other questions which I propose to propound to you; and I do so for the purpose of laying a foundation upon which I will then request the chairman of this subcommittee to order and direct you to answer those questions.

The Committee on Un-American Activities has two major responsibilities which it is undertaking to perform here in Atlanta.

Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal security laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Communist Party and the Communist conspiratorial operations in the United States. H. R. 9937 is one of those. Other proposals are pending before the committee not in legislative form yet, but in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

Now with reference to pertinency of this question to your own factual situation, may I say that it is the information of this committee that you now are a hard-core member of [fol. 305] the Communist Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee, including a particular committee in California and a particular committee in Chicago, a committee—the name of which is along the line of the committee for cultural freedom, or something of that kind. I don't have the name before me at the instant.

It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

Now, sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we in-

tend to pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Communist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled "Operation Abolition," in which we told something of the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light, to destroy the F. B. I. and discredit the director of the F. B. I. and to undertake to hamstring the work of this Committee on Un-American Activities.

So if you will answer that principal question, I intend to pursue the other questions with you to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States of America under whose flag you, sir, have protection.

Now please answer the question: Are you now a member of the Communist Party?

Mr. Wilkinson. I am refusing to answer any questions of this committee.

Mr. Arens. Mr. Chairman, I respectfully suggest now that the record reflect an order and direction of the chairman to the witness to answer this question.

Mr. Willis. I will so order, but before doing so I want to add this remark about pending legislation.

There is a bill pending right now before the Congress. We have held hearings on it just a couple of weeks ago on the question of the organizational features of the Communist conspiracy. Specifically the Supreme Court, in what is popularly referred to as the Yates Case, held that the Communist Party must be regarded as having been organized in 1945 and that automatically thereby all prosecutions for organizational features have been destroyed and no more prosecution is possible.

We take the position that what happened in 1945 was a reconstruction of the party, rather than an organization of it; that it had been organized years before. And we re-

ceived evidence yesterday along the lines of the present techniques in connection with new organizational efforts; and among other reasons for pertinency of these hearings, would be the development of information which we feel you have, sir, that you could shed light on the current methods of organizing or regrouping or reconstructing of the party and subdivisions thereof.

I make that plain to you because it is necessary under the decision that that be done. It is necessary that we set forth for the record a description of the pertinency of the hearings, which has been done by counsel, and I have tried to implement it. And then it is necessary for us to warn you that we disagree with your position as a basis for possible contempt proceedings.

Now, thus far, your position is simply that you will not have anything to say to this committee. You are not represented by counsel. I tell you that it would be better for you, as a matter of protection of your own rights, if you fear that what we develop through you might tend to incriminate you that you would have the right to invoke the privilege of the fifth amendment if you honestly fear that the answers to the questions propounded to you would tend to incriminate you. But you are not doing that, sir. You are simply, point blank, taking the position of obvious contempt for this committee and its purposes. You have not invoked any constitutional provision that you could invoke if you honestly fear that to testify here would get you in criminal trouble.

So having explained that to you, I now order and direct you to answer the question.

Mr. Wilkinson. I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these

powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.

I am, therefore, refusing to answer any questions of this committee.

Mr. Willis. Proceed, Mr. Arens.

Mr. Arens. I should like, if you please, sir, to read you some testimony taken under oath in Los Angeles, California, on December 7, 1956, in which a witness Anita Schneider was testifying. Mrs. Schneider had been, in the course of [fol. 307] previous testimony, testifying about an organization known as the Citizens Committee to Preserve American Freedoms. Mrs. Schneider gave a response which precipitated this question from myself:

Q. Was it Communist controlled?

A. Yes.

Q. Who was the ringleader in that organization?

A. I didn't work in that organization and I don't know who the ringleader was. My contact on that occasion was with Frank Wilkinson, I believe.

Q. Did you know him as a Communist?

A. Yes.

Q. Have you any further information with reference to those two documents to which you are now alluding?

A. Yes. Mr. Wilkinson asked me to start a similar organization or branch of that organization in the San Diego area. He said that he would give me a list of professional people—teachers, doctors, and lawyers—in the San Diego area and that I should contact them in an attempt to set up such a committee in San Diego.

And I skip a paragraph which is not germane to this particular subject matter. Then she continues:

When I discussed this with Frank Wilkinson in Los Angeles, I said that since I wasn't a professional person, at that time I wasn't active publicly, that perhaps it might be better to have someone else head it.

Mr. Wilkinson, was Mrs. Schneider telling the truth when she took an oath before this committee and testified that she knew you as a Communist?

Mr. Wilkinson. I am refusing to answer questions.

Mr. Arens. Do you know Mrs. Anita Schneider?

Mr. Willis. I think I should order him to answer that question.

Mr. Arens. If you will please, sir; yes, sir. And I respectfully suggest, Mr. Chairman, that the record reflect the intention of myself that the explanation of pertinency and relevancy which I previously gave is applicable to the particular question which is now outstanding.

Mr. Wilkinson. I refuse to answer any questions of this committee on the grounds which I have stated previously.

Mr. Arens. Mr. Wilkinson, where were you when you were subpoenaed to appear before the Committee on Un-American Activities in this particular session?

Mr. Wilkinson. I am refusing to answer questions.

Mr. Arens. I should like, if you please, sir, to display to you a photostatic reproduction of the registration at the Atlanta Biltmore Hotel, Atlanta, Georgia, of yourself and one Dr. James A. Dombrowski, obviously registered together on July 23. This bears in handwriting the name "Frank Wilkinson; Street, 421—7th Avenue, New York City 27, New York; Business firm, Emergency Civil Liberties Committee; Street, same. I plan to check out in a week. Room No. 253," I believe.

Kindly look at that photostatic reproduction of your registration on July 23 here in Atlanta and tell this committee, while you are under oath please, sir, whether or not that is a true and correct reproduction of the registration as you filled it out on July 23 at the Atlanta Biltmore Hotel in Atlanta, Georgia.

Mr. Willis. He has asked you to identify the document, the registration.

Mr. Arens. I beg your pardon, sir.

[fol. 308] Mr. Willis. I am explaining to him—

Mr. Arens. Excuse me.

Mr. Willis. —that you asked him to identify the registration document.

Mr. Arens. I asked him to look at it and tell whether or not it is a true and correct reproduction of the form as he

filled it out at the Atlanta Biltmore Hotel, Atlanta, Georgia, on July 23, 1958.

Would you kindly answer the question?

Mr. Willis. Do you understand the question?

Mr. Wilkinson. I am refusing to answer any questions of this committee.

Mr. Arens. Mr. Chairman, I respectfully suggest, so that this record may be abundantly clear, that the explanation of pertinency previously given be related into this particular question on our record and that there be an order and direction to this witness to answer the question.

Mr. Willis. You are ordered to answer the question.

Mr. Wilkinson. I refuse to answer any questions of this committee on the grounds of my initial answer. The House Committee on Un-American Activities stands in direct violation of the first amendment to the United States Constitution.

Mr. Arens. Now, Mr. Chairman, I respectfully suggest that the document which was obtained by subpoena by this committee from the Atlanta Biltmore Hotel be appropriately marked and incorporated by reference in this record.

Mr. Willis. It will be so marked and incorporated.

(Document marked "Wilkinson Exhibit No. 1," and retained in committee files.)

Mr. Arens. Now I should like to display to you, Mr. Witness, another document. It is a photostatic reproduction of some telephone calls made by Frank Wilkinson over the course of a number of days, beginning on July 23, 1958, from the Atlanta Biltmore Hotel—a number of long distance telephone calls. At least there are long distance telephone calls on this.

I should like to display this document to you and ask you whether or not you made the calls to the places indicated in the document at the time revealed by the document.

Mr. Wilkinson. I am answering no questions.

Mr. Arens. Mr. Chairman, I respectfully suggest that this document which was obtained by subpoena from the Committee on Un-American Activities served upon the officials of the Atlanta Biltmore Hotel be incorporated by reference in the record.

Mr. Willis. Let it be incorporated.

(Document marked "Wilkinson Exhibit No. 2," and retained in committee files.)

Mr. Arens. And that the witness now be ordered and directed to answer the question and that the record reflect at this point the explanation of pertinency and the powers and duties and responsibilities of this Committee.

Mr. Willis. You are so ordered.

Mr. Wilkinson. I refuse to answer any questions of this committee on the grounds of my initial refusal.

[fol. 309] Mr. Arens. Are you now the principal driving force, the leader, of the Emergency Civil Liberties Committee?

Mr. Wilkinson. I refuse to answer any questions.

Mr. Arens. Mr. Chairman, I respectfully suggest that the record again reflect an order and direction to this witness to answer the question and that the record at this point reflect the explanation of pertinency and relevancy, the powers and duties of this committee as previously developed in the record.

Mr. Willis. You are so ordered.

Mr. Wilkinson. I refuse to answer any questions of this committee on the grounds of my initial answer. The mandate of the House Committee on Un-American Activities stands in direct violation of the first amendment to the United States Constitution.

Mr. Jackson. Mr. Chairman, so that the record may be absolutely clear. The witness has made reference to the first amendment. It is not clear to me whether or not the witness intends or is invoking the provisions of the first amendment in his declination to answer the questions.

Mr. Wilkinson. My initial answer stands as my answer.

Mr. Jackson. No. I am not at all satisfied with it. It might well be that the reference to the first amendment might conceivably be interpreted as relying upon the first amendment, where the witness has not specifically indicated that he is so relying. Mr. Chairman.

Mr. Willis. And you are asking him if he is relying on the first amendment to the Constitution as a basis for his refusal to answer these questions?

Mr. Jackson. That was the purport of my question.

Mr. Wilkinson. My initial answer is my answer.

Mr. Jackson. What again, if you will please, for the record, was your original and initial answer?

Mr. Wilkinson. My initial answer is my answer.

Mr. Jackson. I think this point should be clarified at some stage during the proceedings, Mr. Chairman.

Mr. Arens. Mr. Chairman, I respectfully suggest that the return of the United States marshal showing the time and place of service of the subpoena upon Frank Wilkinson at the Atlanta Biltmore Hotel be incorporated by reference in this record.

Mr. Willis. It will be so incorporated.

Mr. Arens. Now, sir, I put it to you as a fact and ask you to affirm or deny the fact that you are part of an enterprise to destroy the very Constitution of the United States under which we all have protection; that you are the agent of the Communist Party as an arm of the international Communist conspiracy sent into Atlanta for the purpose of engaging in conspiratorial activities on behalf of the Communist Party. If that is not so, deny it while you are under oath.

Mr. Wilkinson. I am answering no questions of this committee.

Mr. Arens. Mr. Chairman, I respectfully suggest that will conclude the staff interrogation of this witness.

Mr. Tuck. I have no questions.

Mr. Willis. I want to pursue a little, for a moment, the questions asked by the gentleman from California. And I wish you would understand, sir, that the idea in his mind, [fol. 310] as in mine, is that the record will reflect, as much for your protection as for the benefit of the committee, the basis for your refusal to answer these questions.

You have not made it abundantly clear whether you are invoking the protection of the first amendment upon a feeling on your part that you want to personally rely, and it is a personal matter to you, on that amendment as a basis for refusal or whether your reference to the amendment is, let us say, philosophical conversation or some other ideas you might have in mind.

Will you not please try to clarify that point for us?

Mr. Wilkinson. My answer is my answer.

Mr. Jackson. Mr. Chairman, let the record show I am not satisfied with that answer.

Mr. Willis. I think the part and parcel of the whole record is a reflection of an attitude on the part of the witness which is obvious I think to everyone.

Mr. Arens. We have no further questions of this witness, Mr. Chairman. We have another witness.

Mr. Willis. You are excused.

Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to the said Frank Wilkinson, relative to the subject matter which, under Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 85th Congress, the said committee was instructed to investigate, and the refusal of the witness to answer the questions, namely:

Are you now a member of the Communist Party?

I should like to display this document to you and ask you whether or not you made the calls to the places indicated in the document at the time revealed by the document.

Are you now the principal driving force, the leader, of the Emergency Civil Liberties Committee?

which questions were pertinent to the subject under inquiry, is a violation of the subpoena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States.

OTHER PERTINENT COMMITTEE PROCEEDINGS

The following resolution was adopted at the organizational meeting of the committee for the 85th Congress, held on the 22d day of January, 1957:

Be it resolved, That the chairman be authorized and empowered from time to time to appoint subcommittees.

composed of three or more members of the Committee on Un-American Activities, at least one of whom shall be of the minority political party, and a majority of whom shall constitute a quorum, for the purpose of performing any and all acts which the committee as a whole is authorized to perform.

The following is an extract from the minutes of an executive session of the subcommittee of the Committee on Un-American Activities, consisting of Hon. Edwin E. Willis, chairman; Hon. William M. Tuck; and Hon. Donald L. Jackson, held on the 8th day of August, 1958, in room 225 Old House Office Building, Washington, D. C.:

The subcommittee was called to order by the chairman who stated the purpose of the meeting was to consider what action the subcommittee would take regarding the refusal of certain witnesses to answer material questions propounded to them in the course of the hearings conducted by the said subcommittee in Atlanta, Georgia, beginning on the 29th day of July, 1958, and what recommendation it would make regarding the citation of any such witnesses for contempt of the House of Representatives.

After full consideration of the testimony of the witnesses given at the said hearing in Atlanta, Georgia, a motion was made by Mr. Jackson, seconded by Mr. Willis, and unanimously adopted, that a report of the facts relating to the refusal of Frank Wilkinson to answer material questions before the said subcommittee at the hearing aforesaid, be referred and submitted to the Committee on Un-American Activities as a whole, with the recommendation that a report of the facts relating to the refusal of said witness to answer material questions, together with all of the facts in connection therewith, be referred to the House of Representatives, with the recommendation that the said witness be cited for contempt of the House of Representatives for his refusal to answer the questions therein set forth, to the end that he may be proceeded against in the manner and form provided by law.

The following is an extract from the minutes of an executive session of The Committee on Un-American Activities, consisting of Hon. Francis E. Walter, chairman; Hon. Morgan M. Moulder; Hon. Clyde Doyle; Hon. Edwin E. Willis; Hon. William M. Tuck; Hon. Donald E. Jackson; and Hon. Gordon H. Scherer held on the 8th day of August, 1958, in room 225 Old House Office Building, Washington, D. C.:

The report of the facts relating to the refusal of Frank Wilkinson to answer material questions was submitted to the committee, upon which a motion was made by Mr. Scherer, seconded by Mr. Doyle, and unanimously carried, that the subcommittee's report of the facts relating to the refusal of Frank Wilkinson to answer material questions before the said subcommittee at the hearing conducted before it in Atlanta, Georgia, on the 30th day of July, 1958, be and the same is hereby approved and adopted, and that the Committee on Un-American Activities report and refer the said refusal to answer questions before the said subcommittee, together with all the facts in connection therewith, to the House of Representatives, with the recommendation that the witness be cited for contempt of the House of Representatives for his refusal to answer such questions, to the end that he may be proceeded against in the manner and form provided by law.

[fol. 312]

GOVERNMENT'S EXHIBIT No. 6

Case No. 21756

Admitted Jan 20 1959

H. Res. 5

IN THE HOUSE OF REPRESENTATIVES, U. S.,

January 3, 1957:

Resolved, That the rules of the House of Representatives of the Eighty-fourth Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946,

as amended, be, and they are hereby, adopted as the rules of the House of Representatives of the Eighty-fifth Congress.

Attest:

RALPH R. ROBERTS

Clerk

(Seal)

[fol. 313]

GOVERNMENT'S EXHIBIT No. 7

Case No. 21756

Admitted Jan 20 1959

84TH CONGRESS, 3D SESSION - - - HOUSE DOCUMENT NO. 474

CONSTITUTION

JEFFERSON'S MANUAL

AND

RULES OF THE HOUSE OF REPRESENTATIVES

OF THE UNITED STATES
EIGHTY-FIFTH CONGRESS

By

LEWIS DESCHLER, J.R., M.P.L., LL.D.
PARLIAMENTARIAN

[Emblem]

[fol. 314]

RULE X.

STANDING COMMITTEES.

§.669. Election of
standing
committees.

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

The present form of this rule was made effective Jan. 2, 1947, as a part of the Legislative Reorganization Act

of 1946. That Act consolidated 44 committees of the 79th Congress into the following 19 committees. The old rule intrusting the appointment of committees to the Speaker was adopted in 1789 and amended in 1790 and in 1800 (IV, 4448-4476). Committees are now elected on motion or resolution from the floor (VIII, 2171) and it is in order to move the previous question on such motion or resolution (VIII, 2174). The motion is not divisible (Rule XVI, cl. 6) and is privileged (VIII, 2179, 2182).

§ 670. Names and numbers of the standing committees.

[fol. 315] (q) Committee on Un-American Activities, to consist of nine Members.

[fol. 316]

RULE XI.

POWERS AND DUTIES OF COMMITTEES.

All proposed legislation, messages, petitions, memorials, and other matters relating to the subject listed under the standing committees named below shall be referred to such committees, respectively:

§ 675. Jurisdiction of committees.

[fol. 317] 17. COMMITTEE ON UN-AMERICAN ACTIVITIES.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation

§ 720. Un-American Activities.

thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

This committee was established as a standing committee on January 3, 1945. It has jurisdiction of resolutions to define communism (Mar. 20, 1947, p. 2315, 2343) and also bills to protect the United States against certain un-American and subversive activities by requiring registration of Communist organizations (Subversive Activities Control Act of 1950).

[fol. 319] 25 (a) The rules of the House are the rules of its committees so far as applicable, except that a motion to recess from day to day is a motion of high privilege in committees. Committees may adopt additional rules not inconsistent therewith.

§ 735. Rules of Committee Procedure.

This paragraph was adopted December 8, 1931 (VIII, 2215) and amended March 23, 1955, pp. 3569, 3585.

A committee may adopt rules under which it will exercise its functions (I, 707; III, 1841, 1842; VIII, 2214) and may appoint subcommittees (VI, 532) which should include majority and minority representation (IV, 4551) and confer on them powers delegated to

the committee itself (VI, 532) but express authority is given subcommittees by the House (III, 1754-1759, 1801, 2499, 2504, 2508, 2517; IV, 4548).

(b) Each committee shall keep a complete record of all committee action. Such record shall include a record of the votes on any question on which a record vote is demanded.

This provision from Sec. 133 (b) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

[fol. 320] (c) All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House and all Members of the House shall have access to such records. Each committee is authorized to have printed and bound testimony and other data presented at hearings held by the committee.

This provision from Sec. 202 (d) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(d) It shall be the duty of the chairman of each committee to report or cause to be reported promptly to the House any measure approved by his committee and to take or cause to be taken necessary steps to bring the matter to a vote.

This provision from Sec. 133 (c) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24. It is sufficient authority for the chairman to call up a bill on Calendar Wednesday (Speaker Rayburn Feb. 22, 1950, p. 2162).

(e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

This provision from Sec. 133 (d) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

The point of order that a bill was reported from a committee without a formal meeting and a quorum present comes too late if debate has started on the bill in the House (VIII, 2223; Feb. 24, 1947, p. 1374).

(f) Each committee shall, so far as practicable, require all witnesses appearing before it to file in advance written [fol. 321] statements of their proposed testimony, and to limit their oral presentation to brief summaries of their argument. The staff of each committee shall prepare digests of such statements for the use of committee members.

This provision from Sec. 133 (e) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(g) All hearings conducted by standing committees or their subcommittees shall be open to the public, except executive sessions for marking up bills or for voting or where the committee by a majority vote orders an executive session.

This provision from Sec. 133 (f) of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(h) Each committee may fix the number of its members to constitute a quorum for taking testimony and receiving evidence, which shall be not less than two.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

Alleged perjurious testimony elicited from a witness during a period when less than a quorum of the committee was in attendance is not perjury, for under such circumstances the committee is not a "competent tribunal" (Christoffel v. U. S., 338 U. S. 84).

(i) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(j) A copy of the committee rules, if any, and paragraph 25 of rule XI of the House of Representatives shall be made available to the witness.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(k) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(l) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from the hearings; and the committee may cite the offender to the House for contempt.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

(1) receive such evidence or testimony in executive session;

(2) afford such person an opportunity voluntarily to appear as a witness; and

(3) receive and dispose of requests from such person to subpoena additional witnesses.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(n) Except as provided in paragraph (m), the chairman shall receive and the committee shall dispose of requests to subpoena additional witnesses.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(d) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

[fol. 323] (p) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

(q) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

This paragraph was adopted March 23, 1955, pp. 3569, 3585.

26. To assist the House in appraising the Administration of the laws and in developing such amendments or related legislation as it may deem necessary, each standing committee of the House shall exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject matter of which is within the jurisdiction of such committee; and, for that purpose, shall study all pertinent reports and data submitted to the House by the agencies in the executive branch of the Government.

§ 736. Legislative oversight by committees.

This provision from Sec. 136 of the Legislative Reorganization Act of 1946 was made a part of the standing rules January 3, 1953, p. 24.

(fol. 324)

GOVERNMENT'S EXHIBIT No. 8

Case No. 21756

Admitted Jan 20 1959

Ralph R. Roberts
Clerk

OFFICE OF THE CLERK

HOUSE OF REPRESENTATIVES

WASHINGTON, D. C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the following Members constitute the Committee on Un-American Activities of the House of Representatives as is evidenced in the Journal of the House of Representatives of January 10, 1957, January 16, 1957, and January 16, 1958: Francis E. Walter (Chairman), of Pennsylvania, Morgan M. Moulder, of Missouri, Clyde Doyle, of California, Edwin E. Willis, of Louisiana, William M. Tuck, of Virginia, Bernard W. (Pat) Kearney, of New York, Donald L. Jackson, of California, Gordon H. Scherer, of Ohio, and Robert J. McIntosh, of Michigan.

In witness whereof I hereunto affix my name and the seal of the House of Representatives in the City of Washington, District of Columbia, this fourteenth day of August anno Domini one thousand nine hundred and fifty-eight.

(Seal)

/s/ RALPH R. ROBERTS
Clerk of the
House of Representatives

(fol. 325)

CLERK'S NOTE

To avoid duplication in printing and at the request of the Solicitor General, the following exhibits are not printed at this point because the pertinent resolutions and parts

therein are set out in Government's Exhibit No. 2, printed on page 235 hereof:

Exhibit No. 9—Certified minutes of meeting of Committee on Un-American Activities on May 21, 1958, containing resolution authorizing hearings in Atlanta, Georgia.

Exhibit No. 10—Certified minutes of meeting of Committee on Un-American Activities of January 22, 1957, authorizing Chairman to appoint subcommittees.

Exhibit No. 11—Certified Order of Francis E. Walter, Chairman, Committee on Un-American Activities, dated June 24, 1958, appointing members of subcommittee to conduct hearings in Atlanta, Georgia.

Exhibit No. 12—Certified minutes of a sub-committee of the Committee on Un-American Activities of August 8, 1958, containing resolution recommending to the House of Representatives contempt citation of Frank Wilkinson.

Exhibit No. 16—Subpena issued and served on Frank Wilkinson.

Exhibit No. 17—Certified minutes of Committee on Un-American Activities of August 8, 1958, containing resolution adopting subcommittee's report of facts regarding refusal of Frank Wilkinson to answer material questions and that Committee refer refusal and facts to House with recommendation that Frank Wilkinson be cited for contempt.

101-326

GOVERNMENT'S EXHIBIT No. 13

Case No. 21756

Admitted Jan 20 1959

80TH CONGRESS

2D Session

H. RES. 685

IN THE HOUSE OF REPRESENTATIVES

August 13, 1958

Mr. WALKER submitted the following resolution;
which was considered and agreed to

RESOLUTION

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Frank Wilkinson to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the Northern District of Georgia, to the end that the said Frank Wilkinson may be proceeded against in the manner and form provided by law.

I, Ralph R. Roberts, Clerk of the House of Representatives hereby certify that the above Resolution is a true and correct copy as adopted by the House of Representatives on August 13, 1958.

/s/ RALPH R. ROBERTS

RALPH R. ROBERTS

Clerk

U. S. House of Representatives

266

[fol. 327]

85TH CONGRESS
2D SESSION

H. RES. 685

RESOLUTION

Citing Frank Wilkinson for contempt.

By Mr. WALTER

AUGUST 13, 1958

Considered and agreed to

[fol. 328]

GOVERNMENT'S EXHIBIT No. 14

Case No. 21756

Admitted Jan 20 1959

Sam Rayburn
4th District, Texas

THE SPEAKER'S ROOMS
HOUSE OF REPRESENTATIVES U. S.
WASHINGTON, D. C.

The United States Attorney
Northern District of Georgia

The undersigned, the Speaker of the House of Representatives of the United States, pursuant to House Resolution 685, Eighty fifth Congress, hereby certifies to you the refusal of Frank Wilkinson to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities of the House of Representatives conducting an investigation authorized by Public Law 601, Seventy-ninth Congress, and House Resolution 5 of the Eighty-fifth Congress, as is fully shown by the certified copy of the report (House Report 2583) of said committee which is hereto attached.

Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, District of Columbia, this fourteenth day of August 1958.

/s/ SAMUEL RAYBURN
Speaker of the
House of Representatives

(Seal)

Attest

/s/ RALPH R. ROBERTS
Clerk of the
House of Representatives

[fol. 329]

SUPREME COURT OF THE UNITED STATES

No. 703—October Term, 1959

FRANK WILKINSON, Petitioner,

—v.—

UNITED STATES.

ORDER ALLOWING CERTIORARI—March 28, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

U.S. Supreme Court, U.S.
FILED
FEB 12 1960
1960 FEB 12 11 AM

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

208 37

FRANK WILKINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT AND MOTION FOR LEAVE TO
USE ORIGINAL EXHIBITS

NANETTE DEMBITZ,
ROWLAND WATTS,
Attorneys for Petitioner,
c/o American Civil Liberties Union,
170 Fifth Avenue,
New York 10, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

FRANK WILKINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND MOTION FOR LEAVE TO USE ORIGINAL EXHIBITS

*To the Honorable, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of
the United States:*

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on December 14, 1959 (Petition for Rehearing denied January 14, 1960).

Introductory Statement.

The court below has construed *Barenblatt v. United States*, 360 U. S. 109, in a manner that conflicts with the general principles of the scope of legislative investigations laid down by this Court and has decided important questions of federal law not previously specifically ruled upon by this Court. The importance of the federal questions raised

lies not only in the fact that the powers of Congressional committees and the rights of witnesses subpoenaed before them are herein involved, but also in the fact that the vital First Amendment right of the people to petition the Government for redress of grievances is at issue.

Motion for Leave to Use Original Exhibits

The District Court granted a motion filed by the petitioner on May 6, 1959, that "the original exhibits filed in this case be forwarded as original documents to the Fifth Circuit Court of Appeals for use in such appeal in order to obviate the necessity of reproducing them in the record on appeal." (R. 106, 107)¹ These exhibits consist of 16 government exhibits admitted into evidence. They are voluminous and in large part surplus, because repetitious. They largely have to do with the authority of the subcommittee of the House Committee on Un-American Activities to hold the hearings in question in Atlanta and with the legal establishment of the pertinency of the questions asked your petitioner. The parts of these exhibits deemed relevant by the petitioner are set forth either in the decision of the court below or in this petition.

The petitioner, therefore, moves that this Court order that the original exhibits filed in this case be now forwarded to it in order to obviate the necessity of reproducing them in the record before this Court.

Opinions Below

Petitioner was tried before a jury. The District Court rendered no opinion in orally denying the motions for a directed verdict of acquittal (R. 80-85), in arrest of judg-

¹ Record on Appeal to the Court of Appeals for the Fifth Circuit, hereinafter designated, "R." Nine copies of this record have been filed with the Clerk of the Court.

ment and for a new trial (R. 103-106). The opinion and order of the Court of Appeals entered December 14, 1959 are not yet officially reported and are printed in Appendix B, *infra*, p. 4a.

Jurisdiction

The opinion and judgment of the United States Court of Appeals were entered December 14, 1959. Petition for rehearing was denied January 14, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and Rule 37(b)(2) of the Federal Rules of Criminal Procedure.

Questions Presented

1. Congress did not authorize the Committee to investigate propaganda activities against itself.
2. If Congress authorized the Committee to investigate propaganda activities against itself, such authorization is void as violative of the First Amendment.
3. The Committee did not have a legislative purpose in subpoenaing petitioner, but rather had the unlawful purpose of harassing or exposing him.
4. The question asked the petitioner was not pertinent to the matter under inquiry.
5. Because the *Barenblatt* decision has permitted this result, it requires clarification or revision by this Court.

Constitutional and Statutory Provisions Involved

These are printed in Appendix A, *infra*, pages 1a-3a.

Statement

Petitioner, Frank Wilkinson, was convicted in the District Court for the Northern District of Georgia under an indictment charging violation of 2 U.S.C. § 192 for refusing to answer a question before a subcommittee of the House Committee on Un-American Activities. The indictment charged, in substance, that petitioner "unlawfully refused to answer" the following question "pertinent to the question then under inquiry":

"Are you now a member of the Communist Party?"

For a period of time prior to petitioner's appearance before the subcommittee on July 30, 1958, and prior to December 1956, he had engaged in activities directed toward persuading the public to petition the government to abolish the House Committee on Un-American Activities. In December 1956, at a hearing of the Committee in Los Angeles, he appeared before it in response to a subpoena and refused to answer questions then propounded to him by the Committee in language substantially the same as that used in refusing to answer questions at the Atlanta hearing that led to his indictment and conviction in the instant case (R. 66).

Pursuant to subpoena, petitioner appeared and testified on July 30, 1958, before the subcommittee in Atlanta, which had been authorized by the chairman of the Committee, to conduct hearings upon the following subjects (in pertinent part):*

"1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

(a) To obtain additional information for use by the Committee in its consideration of Section 16 of

* The full stated purposes are set forth in footnote, *supra*, pp. 10, 11.

H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it."

The claimed authority of the subcommittee to make such investigation is founded upon the authority of the Committee itself which is set forth in Rule XI of the House of Representatives, 60 Stat. 828, and Resolution of January 3, 1957, adopting such Rule and the applicable provisions of the Legislative Reorganization Act of 1946, as amended, as the rules of the House of Representatives for the 85th Congress (R. 25, 26 and Govt. Exh. 6).¹

The subpoena dated July 22, 1958, in Washington, D. C., was served on Wilkinson on July 23, 1958, within an hour after he arrived at his hotel in Atlanta (R. 72-74). The subpoena was issued after the Committee learned that Wilkinson had come to Atlanta to try to organize public sentiment against the Subcommittee's holding of hearings there (R. 67, and Govt. Exh. 2, p. 8).

Wilkinson appeared before the Subcommittee in response to such subpoena on July 30, 1958, but after identifying himself refused to answer the question set forth in the indictment. He stated:

"I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee

¹ This rule, and the applicable provisions of the law and of the Constitution are set forth in Appendix A, *infra*, pp. 1a-3a.

stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.

I am, therefore, refusing to answer any questions of this committee." (Govt. Exh. 2, p. 9)

Proceedings Below

At the presentment on January 12, 1959, after a motion for continuance was overruled, the petitioner waived arraignment and plead, "Not Guilty," to the indictment (R., p. 3). After a trial before a jury, on January 20 and 21, 1959, the jury on the later date found the petitioner guilty (R., 3-6). Upon the conclusion of the government's case, the petitioner made a motion for judgment of acquittal (R. 80-85), after denial of which the defense rested. Following the finding of a verdict of conviction by the jury, a motion in arrest of judgment prior to judgment and imposition of sentence was made and denied (R. 7). After sentence, a motion for a new trial was made and denied (R. 103). Thereafter, the appeal proceeded as hereinbefore set forth.

Reasons for Granting the Writ

I

Congress did not authorize the Committee to investigate propaganda activities against itself.

The petitioner was subpoenaed to appear before the Subcommittee's hearings in Atlanta, in the words of the Committee's director, Mr. Richard Arens, because:

"It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. It is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta." (The full statement of Mr. Arens is set forth in the margin of the Court of Appeals opinion, Appendix B, *infra*, pp. 4a-12a.)

The court below held this Court's decision in *Barenblatt v. United States*, 360 U. S. 109, that " . . . in pursuance of its legislative concerns in the domain of 'national security' the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country (at p. 118)," included "the power to investigate activities directed to interference with the legislative processes and their functioning." (Opinion, Appendix B, *infra*, pp. 4a-12a). That conclusion does not follow and as here applied, cannot be correct. There is nothing in the record to show that the Congress actually authorized the Committee to investigate activities "directed to interference with the legislative processes and their functioning"

but rather that the Committee was only authorized to investigate "Un-American propaganda activities." The activities alleged against the petitioner that have to do with the legislative processes were to develop a "hostile sentiment" to the Committee for "the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings." Such activities are directed toward the petitioning of the government for redress of grievances and in the absence of clear authorization by the Congress cannot be presumed to come within the pervasive authority granted the Committee, as Congress cannot be presumed to have invaded a constitutional danger zone so clearly marked. *Watkins v. United States*, 354 U. S. 178.

Public criticism of a committee of Congress cannot be construed, as such, to be in "the domain of 'national security'", as "Communist", or as "un-American" even though it may be shown that Communists engage in it.

II

If Congress authorized the Committee to investigate propaganda activities against itself, such authorization is void as violative of the First Amendment.

The court below construed *United States v. Harriss*, 347 U. S. 612, as holding that "the Congress is not prohibited by the First Amendment guarantee of the right to petition the government to redress of grievances from exercising measures of self-protection in requiring disclosures of lobbying activities. (Opinion, *infra*, p. 11a)." This Court carefully circumscribed its opinion in *Harriss* to support no such conclusion. In *Harriss*, Mr. Chief Justice Warren, speaking for the Court, construed the Lobbying Act "narrowly to avoid constitutional doubts (p. 623)." He stated, at page 620, "[W]e believe this language should be construed to refer only to 'lobbying' in its commonly accepted

sense—to direct communication with members of Congress on pending or proposed Federal legislation.” And, at page 625, “Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities.” The Court specifically disposed of “[h]ypothetical borderline situations . . . in which . . . persons choose to remain silent because of fear of possible prosecution for failure to comply with the [Lobbying] Act.” It said, “Our narrow construction of the Act, precluding as it does reasonable fears, is calculated to avoid such restraint (p. 626).” Here petitioner urges that whatever reasonable fears may have been dissipated by such narrow construction of the Lobbying Act are reasonably revived by the court below’s opinion that Congress may legislate restricting, by requiring disclosure of motivation, the right to carry on a public campaign toward petitioning the government for redress of grievances.

To hold that Congress can so investigate because it has the power to legislate to restrict the right to petition by requiring exposure of the motivations of those who seek to petition, would defeat the very purpose of the First Amendment, by foreclosing the political process through which legislative excesses may be curbed.

Free speech on political topics is more than a personal right. “The greater importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired may be obtained by peaceful means.” *DeJonge v. Oregon*, 299 U. S. 353, 365.

In *Barenblatt*, the Court said: "Undeniably, the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships . . . Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interest at stake in the particular circumstances shown (p. 126)." Here the "subordinating interest of the state" is neither compelling nor existing, as the Congress had no power to legislate to circumscribe the petitioner's efforts in opposition to the Committee by requiring a disclosure of his motivation. There was nothing to put into balance in support of the state's interest in the domain of "national security".

III

The Committee did not have a legislative purpose in subpoenaing petitioner, but rather had the unlawful purpose of harassing or exposing him.

The resolution of the Committee on Un-American Activities authorizing and directing the holding of the hearings in Atlanta is set forth in Government Exhibit 2, Page 3, and Government Exhibit 9. For convenience of reference, the specific purposes are set forth in full in the margin here.¹ On direct examination, Government Witness Richard Arens, summarized this purpose as follows:

¹ 1. The extent, character and *objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South*, the legislative purpose being:

(a) To obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and

"Q. Now, what was the subject under inquiry when the House Un-American Activities Committee, the subcommittee, that is, came down to Atlanta, Georgia in July of last year, July 29, 30, 31 of 1958?

A. The general subject under inquiry by the committee was the extent and character and objects of communist colonization, infiltration in the textile industry and other basic industries located in the South. The extent to which the Communist party and communists were engaging in communist propaganda activities through communist front organizations and the like in the South.

Q. Did it have any relationship to foreign communistic propaganda? A. Yes. I should have mentioned that too. We were also concerned and as the record will reflect, received testimony respecting the dissemination of foreign communistic propaganda in the South." (R. pp. 39-40)

There was no evidence introduced at either the hearings or the trial to show that the petitioner had any information concerning these matters, the subject of investigation, or, for that matter, that he had ever been in the South

wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate.

before. On the contrary, the Committee had every reason to believe that the petitioner would refuse to answer any questions of the Committee. His subpoenaing, therefore, could serve no legislative purpose, but was, only for the purpose of harassment and exposure.

In December of 1956, the petitioner was subpoenaed to appear before hearings of the Committee at Los Angeles. He there declined to answer the questions of the Committee and made essentially the same statement of reasons for declining to answer them (R. 66).

In *United States v. Tucker*, 267 F. 2d 212 (3rd Cir.), decided May 8, 1959, the court in remanding a criminal case for a third trial warned against a repetition of the *impropriety* of requiring a witness to take the stand in the second trial where he had plead his constitutional privilege against self-incrimination when he was on the stand in the first trial and where, "There is no suggestion that the government had any reason to believe that at the second trial the witness would answer those questions he refused to answer at the first trial" (p. 215). Petitioner submits that the subpoenaing of him at Atlanta, after he had refused to testify before the Committee in Los Angeles almost two years earlier, is analogous to this. He urges that the only purpose of subpoenaing him was to discredit him in his efforts to induce the public to petition the government for the abolition of the Committee. This conclusion is fortified by the reasons advanced by the Committee's Staff Director, Mr. Arens, for the subpoenaing of the petitioner.

IV

The question asked the petitioner was not pertinent to the matter under inquiry.

The trial court having ruled as a matter of law that the question of pertinency was one for the court to determine and, having so determined, instructed the jury that the question upon which the petitioner was indicted:

“Are you now a member of the Communist Party.” (R 1-2).

was pertinent, the petitioner did not take exception to that instruction (R 103). He is not here, therefore, in a position to assert that this was properly a question for the jury.

He can and does assert that the ruling of the trial court as a matter of law, that the question was pertinent, was erroneous and asserts that the Court of Appeals decision affirming that ruling (Op., Appendix B, p. 4a) was erroneous.

The question of pertinency being thus before the Court, petitioner contends that the question he refused to answer, which resulted in his conviction, was not in law pertinent to the subject under inquiry.

This Court in *Barenblatt* said, at page 134: “There is no indication in this record that the Subcommittee was attempting to pillory witnesses.” Here, the record is clear that the Subcommittee was attempting to do exactly that to the petitioner.

The mere statement of the Committee’s staff director that the petitioner was “a hard-core Communist” (see margin statement Court of Appeals decision, Appendix B) is not sufficient to establish the right of the Committee to hold the petitioner accountable, under compulsory process, for refusing to answer the question, “Are you now a member of the Communist Party?”, in the absence of a showing of relationship of the person subpoenaed to the specific subject of the inquiry, if such there was, not a general “pervasive” catch-all investigation.

Both *Watkins* and *Barenblatt*, in requiring that the witness be "sufficiently apprised of 'the topic under inquiry' * * * authorized [by the Congress] and 'the connective reasoning whereby the precise questions asked related to it' " (360 U. S. at p. 124), clearly indicate that there must be a specific subject under inquiry and the witness must have some relationship to that specific subject. When 2 U.S.C. 192 states that it is a contempt to refuse "to answer any question pertinent to the question under inquiry" it means that there must be a specific subject under inquiry. Here the subject matter, as stated by the Committee chairman at the opening (Govt. Exh. 2, pp. 4-6) and by the Staff Director as quoted by the court below (Appendix B, *infra*, pp. 5a-8a), has at most a superficial ring of specificity in referring to a few statutes. Actually the statements as to the whole purpose of the investigation are all inclusive and fully as broad as the resolution establishing the Committee; the Court in *Watkins* held that the resolution establishing the Committee did not in itself establish a sufficiently definite subject of inquiry. The type of subject which the Court indicated in *Watkins* and *Barenblatt* was sufficiently specific (i.e., what was the degree of Communist infiltration in the field of labor or in the field of education), was not spelled out here.

To hold otherwise would give the House Committee on Un-American Activities the power to subpoena all Americans. The Committee is presently investigating "Communist Activity Among Youth Groups."¹ If this concept

¹ Verbatim reproduction of press release:

FOR IMMEDIATE RELEASE

January 14, 1960

COMMITTEE ON UN-AMERICAN ACTIVITIES
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

The Committee on Un-American Activities announced today that it will hold public hearings in Washington, D. C., beginning on Tuesday, February 2, 1960, on Communist activities among youth groups. The hearings will begin at 10:00 a.m., in the Caucus Room, Old House Office Building.

is affirmed, there is no limit to the pervasive area of investigation accorded to the Committee, as long as it makes an unsubstantiated assertion that one is a Communist or subversive (*Barenblatt v. United States*, 360 U. S. 109). The Committee may now proceed, under this interpretation of its authority, to investigate Communist propaganda activity "among men," "among women," and, then "among sexual deviants."¹

Petitioner, in his brief to the Court of Appeals, urged that this pervasive power to investigate could not include the "man in the street" just because he happened to be on that street." We urged that a nexus between the person subpoenaed and the pertinency of the question asked in relation to the specific inquiry must be priorly established. The Court of Appeals did not dispose of this question, but ignored it.

The Court of Appeals for the District of Columbia, in *Rumely v. United States*, did consider it and adversely resolved it by ruling that pertinency meant:

"* * * as we have indicated, 'pertinent', as used to describe a requisite for valid congressional inquiry means pertinent to a subject matter properly under inquiry, not generally pertinent to the person under interrogation. Moreover, this appellant registered under protest."

This Court did not rule on this question in *Rumely* in reversing the conviction on other grounds (for violation of the Lobbying Act). It did state, however:

"Surely it cannot be denied that giving the scope to the resolution for which the Government contends, that is, deriving from it the power to inquire into

¹ In this connection, it is interesting to note that the Florida Legislative Investigation Committee publicly investigated alleged homosexuality on the campus of the University of Florida. Whether this was either "Un-American," "Communist," or "subversive" activity was not specified.

all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence which they may exert upon the ultimate legislative process, raises doubts of constitutionality in view of the prohibition of the First Amendment." (345 U.S. 41, 46)

We urge that this Court in *Barenblatt* in upholding the Committee's power there to ask the witness whether he was a member of the Communist Party did not mean that the Committee had the power at any time to subpoena any individual to ask him this question. As part of this Court's ruling that the question could be asked of *Barenblatt*, the Court had established that there was a specific subject under inquiry to which the witness was related: that is, the subject under inquiry was Communist infiltration into the field of education and *Barenblatt* had been shown to be active in this field. We believe that the *Barenblatt* ruling was intended to establish that the witness could be asked about his Communist Party membership if and when his relationship to the subject of investigation was shown. We urge that the court below erred in its application of the *Barenblatt* opinion when it failed to consider that there must be such a connection between the witness and the subject of investigation in order to establish pertinency.

This question which has become crucial in both federal and state legislative investigations by interpretations of this Court's term "pervasive authority" to investigate in the field of "security" as authorization to each; in "the domain of 'national security'" (*Barenblatt v. United States*, 360 U. S. 109) or the domain of "state security." (*Uphaus v. Wyman*, 360 U. S. 72.) It is raised here on the limited question of pertinency. The Court should take cognizance of it and hear it fully.

V.

Because the *Barenblatt* decision has permitted this result, it requires classification or revision by this Court.

Petitioner has asserted before the Court of Appeals that this Court's decision in *Barenblatt* is erroneous and raised all the questions presented in that case in the event that this Court would grant the petition for rehearing then pending. The petition for rehearing in *Barenblatt* was denied and the bases therefore were disregarded by the court below. Petitioner believes that this Court should now reconsider them.¹

CONCLUSION

For the foregoing reasons, it is prayed that the motion for leave to use the original exhibits and the petition for a writ of certiorari be granted.

Respectfully submitted,

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¹ A perceptive logical and philosophical analysis of the *Barenblatt* opinion by Alexander Meiklejohn is scheduled for publication in 27 *University of Chicago Law Review* 2 (Winter 1960). 10 preprints of this review have been deposited with the Clerk of the Court.

APPENDIX A

The constitutional, statutory provisions and rules involved read in relevant part:

CONSTITUTION OF THE UNITED STATES OF AMERICA

Article I, Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article II, Section. 1. The executive power shall be vested in a President of the United States of America.

Article III, Section 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may from time to time order and establish.

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 5. No person shall . . . be deprived of life, liberty, or property without due process of law.

Amendment 6. In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; . . .

Amendment 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Appendix A

2 U. S. C. Section 192, R. S. 102, (52 Stat. 942), as amended:

“Refusal of witness to testify.

“Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month or more than twelve months.”

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress:

“(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

“RULE XI

“*Power and Duties of Committees*

“(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively * * *

“(q)(1) Committee on Un-American Activities .

“(A) Un-American Activities.

“(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion

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within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7(c) of the Federal Rules of Criminal Procedure provides in relevant part:

"Rule 7. The indictment and the Information. °

(c) NATURE AND CONTENTS. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * *"

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17723

FRANK WILKINSON,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA

(December 14, 1959)

Before:

HUTCHESON, CAMERON and JONES,

Circuit Judges.

JONES, *Circuit Judge*:

It is provided, among other things, by Rule XI of the House of Representatives that:

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign

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countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

A Subcommittee of the Committee on Un-American Activities scheduled hearings in Atlanta, Georgia. At the opening session on July 29, 1958, Representative Francis E. Walter, Chairman of the Committee presided and made a statement which included the following:

"The hearings which begin today in Atlanta are in furtherance of the powers and duties of the Committee on Un-American Activities, pursuant to Public Law 601 of the 79th Congress, which not only establishes the basic jurisdiction of the committee but also mandates this committee, along with other standing committees of the Congress to exercise continuous watchfulness of the execution of any laws the subject matter of which is within the jurisdiction of the committee.

"In response to this power and duty, the Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

"In the course of the last few years, as a result of hearings and investigations, this committee has

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made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

✓ The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism."

The appellant, who had been subpoenaed as a witness, appeared at the hearing on July 30, 1958, was sworn as a witness, answered a question as to his name and was asked to state his residence and to give his occupation. His response was, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee." He stated that he was not represented by counsel but knew that he had the privilege of counsel. He was next asked, "Are you now a member of the Communist Party?" His answer again was, "As a matter of conscience and personal responsibility, I refuse to answer any questions of

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this Committee". As this point the Committee's Staff Director undertook to state the reasons for and pertinency, and relevancy of the question asked and other questions to be asked. Because the pertinency vel non of the question is a major issue on the appeal, it seems desirable to set forth the Staff Director's statement in the margin.¹ The

¹ "Now, sir, I should like to make an explanation to you of the reasons, the pertinency, and the relevancy of that question and certain other questions which I propose to propound to you; and I do so for the purpose of laying a foundation upon which I will then request the chairman of this subcommittee to order and direct you to answer those questions.

"The Committee on Un-American Activities has two major responsibilities which it is undertaking to perform here in Atlanta.

"Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal security laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

"Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

"There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Communist Party and the Communist conspiratorial operations in the United States. H.R. 9937, is one of those. Other proposals are pending before the committee not in legislative form yet, put in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

"Now with reference to pertinency of this question to your own factual situation, may I say that it is the information of this committee that you now are a hard-core member of the Communist

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appellant again refused to answer the question. The statement of the Staff Director was followed by a supplemental statement of Representative Edwin E. Willis, Chairman

Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee, including a particular committee in California and a particular committee in Chicago, a committee—the name of which is along the line of the committee for cultural freedom, or something of that kind. I don't have the name before me at the instant.

"It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its works for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

"Now, sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we intend to pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Communist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled 'Operation Abolition,' in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light to destroy the F.B.I. and discredit the director of the F.B.I. and to undertake to hamstring the work of this Committee on Un-American Activities.

"So if you will answer that principal question, I intend to pursue the other questions with you to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States of America under whose flag you, sir, have protection.

"Now please answer the question: Are you now a member of the Communist Party?"

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of the Subcommittee, who ordered and directed the appellant to answer whether he was a Communist. There was this response, "I am refusing to answer any questions of this Committee." Further explanations by members of the Committee or its Staff Director were made; further questions were asked which the appellant was ordered to answer; and these were met by the reiterated statements of the appellant that he was answering no questions of the Committee.

The reasons of the appellant for his refusal to answer any of the Committee's questions were given by him at the Committee hearing in the following statement:

"I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

"I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.

"I am, therefore, refusing to answer any questions of this committee."

The appellant was indicted, tried, convicted and sentenced for his refusal to answer the question "Are you now a mem-

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ber of the Communist Party². The appellant asks us to reverse his conviction. On May 8, 1959, the appellant filed a Statement of Points on Appeal, saying that he intended to rely on the following:

"1. The statute and resolution establishing the Committee are unconstitutional on their face and as applied to appellant in that they invade appellant's constitutional rights under the First Amendment in respect of his freedom of speech, political and other association and communication; under the Fifth Amendment in that they provide a constitutionally vague and incomplete standard for inquiry and prosecution; under the Sixth Amendment in that they fail to inform him of the nature and cause of the accusation made against him; and under the Ninth and Tenth Amendments in that they invade rights and powers retained by the people and reserved to the people.

"2. The legislative inquiry and the resulting conviction were unconstitutional and unlawful because of an unlawful purpose to expose appellant."

These are entirely in keeping with the appellant's position at the hearing. Subsequent to the taking of the appeal in this cause but before briefs were filed, the opinion in the Barenblatt case² was rendered and a conviction was affirmed for refusal to answer questions of a subcommittee of the House Un-American Activities Committee, including the question, "Are you now a member of the Communist Party?" The same contentions were made in the Barenblatt case as are urged here, and there they were resolved against the position asserted by the appellant. It will follow, there-

² Barenblatt v. United States, 360 U. S. 109, 79 S. Ct. 1081, 3 L. Ed. 2d 1115.

Appendix B

fore, that unless there be something in the case before us to distinguish it from Barenblatt, our decision must be an affirmation.

The defendant in the Barenblatt case was a college professor and an inquiry was being undertaken into Communist infiltration into education. The appellant here admitted that he was engaged in aggressive opposition to the continued functioning of the Committee. The Committee had been informed that the appellant was a hard-core Communist, and he was attempting as a Communist activity to develop hostility to the Committee and its investigations; hence it was within the province of the Committee to make inquiries to ascertain whether Un-American Communist influences were attempting to weaken the Government by impeding and crippling the operation of its legislative branch. As was said in the Barenblatt opinion, " . . . in pursuance of its legislative concerns in the domain of 'national security' the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country". 300 U. S. 109, 118. Included in that pervasive authority is the power to investigate activities directed to interference with the legislative processes and their functioning. The Congress is not prohibited by the First Amendment guaranty of the right to petition the Government for redress of grievances from exercising measures of self-protection in requiring disclosures of lobbying activities. *United States v. Harris*, 347 U. S. 612, 74 S. Ct. 808, 98 L. Ed. 989. Since legislation in the area may be enacted, investigations by legislative agencies is authorized.

The activities in which the appellant was believed to be participating presented a more direct threat to the national security than those of which Barenblatt was suspected.

12a

Appendix B

The decision in the Barenblatt case is controlling here.
The judgment of the district court is

AFFIRMED.

Dec. 15 1959

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

By: CLARA R. JAMES
Deputy

New Orleans, Louisiana

Judgment

(Extract from the Minutes of December 14, 1959)

No. 17723

FRANK WILKINSON,

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

PETITION FOR REHEARING
UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
No. 17723

FRANK WILKINSON,

Appellant,

against

UNITED STATES OF AMERICA,

Appellee.

Petitioner, Frank Wilkinson, respectfully petitions for a rehearing in this matter decided on December 14, 1959.

In support of the petition, petitioner respectfully alleges and shows:

1. This Court erred in construing *United States v. Harriss*, 347 U. S. 612, as upholding legislation requiring disclosures of the motivation for the activities charged to the appellant by the House Committee on Un-American Activities. In *Harriss*, Mr. Chief Justice Warren, speaking for the Court, construed the Lobbying Act "narrowly to avoid constitutional doubts" (p. 623). He stated, at page 620, "[W]e believe this language should be construed to refer only to 'lobbying in its commonly accepted sense'—to direct communication with members of Congress on pending or proposed Federal legislation." And, at page 625, "Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities." The Court specifically disposed of "[h]ypothetical borderline situations . . . in which . . .

Petition for Rehearing

persons choose to remain silent because of fear of possible prosecution for failure to comply with the [Lobbying] Act." It said, "Our narrow construction of the Act, precluding as it does reasonable fears, is calculated to avoid such restraint" (p. 626). Here appellant urges that whatever reasonable fears may have been dissipated by such narrow construction of the Lobbying Act are reasonably revived by this Court's opinion that Congress may legislate restricting, by requiring disclosure of motivation, the right to carry on a public campaign toward petitioning the Government for redress of grievances.

2. This Court erred in interpreting *Barenblatt v. United States*, 360 U. S. 109, 118, as holding that the "pervasive authority to investigate Communist activities in this country" authorizes the Un-American Activities Committee to investigate criticism of itself. Such criticism, as such, is not "Communist" or "un-American" activity even though it may be shown that Communists engage in it.

3. This Court erred in making a judicial finding unsupported by the record that, "The activities in which the appellant was believed to be participating presented a more direct threat to the national security than those of which Barenblatt was suspected."

4. This Court erred in construing petitioner's efforts to enlist public support for his "aggressive opposition to the continued functioning of the Committee" as "activities directed to interfere with the legislative processes and their functioning" (Opinion, pp. 8, 9).

5. Petitioner respectfully urges the Court to give consideration to the question of harassment and exposure, considered in *United States v. Tucker*, 267 F. 2d 212 (3rd Cir.), decided May 8, 1959, wherein the court in remanding a criminal case for a third trial warned against a repetition of the impropriety of requiring a witness to take the stand in the second trial where he had plead his constitutional

Petition for Rehearing

privilege against self-incrimination when he was on the stand in the first trial and where, "There is no suggestion that the government had any reason to believe that at the second trial the witness would answer those questions he refused to answer at the first trial" (p. 215). Petitioner submits that the subpoenaing of him at Atlanta, after he had refused to testify before the Committee in Los Angeles two years earlier, is analogous to this, and he regrets that this case and the supporting cases cited therein were not earlier called to the attention of this Court.

This is the first case where any court has held that Congress may so restrict the right of petition. The constitutional issues here presented were carefully avoided in *Harriss*. Petitioner respectfully requests that this petition for rehearing be granted and that if reargument is ordered it be heard by the Court *en banc*. Petitioner on reargument preserves all other points previously advanced upon the appeal and further preserves such points for consideration by the Supreme Court if a petition for certiorari should become necessary.

Respectfully submitted,

ROWLAND WATTS,

c/o American Civil Liberties Union,
170 Fifth Avenue,
New York 10, N. Y.,
Attorney for Appellant.

Certificate of Counsel

I, ROWLAND WATTS, do hereby certify that I am counsel for the petitioner herein and that this petition for rehearing is presented in good faith and not for delay.

December 31, 1959.

ROWLAND WATTS

Order Denying Rehearing

(Extract from the Minutes of January 14, 1960)

No. 17723

FRANK WILKINSON,

versus

UNITED STATES OF AMERICA.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

FILE COPY

37

No. 674

Office Supreme Court, U.S.

FILED

MAR 14 1960

JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,

Solicitor General;

J. WALTER YEAGLEY,

Assistant Attorney General,

GEORGE B. SEARLE,

LEE B. ANDERSON,

Attorneys,

Department of Justice, Washington, D.C.

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~100~~ 703

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 4a-12a) is reported at 272 F. 2d 783.

JURISDICTION

The judgment of the court of appeals was entered on December 14, 1959. The petition for rehearing was denied January 14, 1960. A petition for a writ of certiorari was filed on February 12, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities, possessing information that petitioner was

an important member of the Communist Party and had been sent to Atlanta by the Party for propaganda purposes, was authorized to subpoena and question him as to his membership and activities in the Communist Party in the course of a duly authorized investigation into Communist activities in the South:

2. Whether the action of the Committee in subpoenaing and questioning petitioner infringed his rights under the First Amendment.

3. Whether the question asked petitioner as to his membership in the Communist Party was pertinent to the subject under inquiry.

STATUTE AND RULE INVOLVED

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent provisions of Rule XI of the House of Representatives, H. Res. 5, 83d Cong., 1st Sess. (99 Cong. Rec. 18), are set forth in Appendix A to the Petition for Certiorari (Pet. 1a-3a).

STATEMENT

Petitioner was charged in a one-count indictment (R. 1) with having knowingly, wilfully, and unlawfully refused to answer a pertinent question asked him by a subcommittee of the House Committee on Un-American Activities. The question was "Are you now a member of the Communist Party?"¹

¹ The Committee reported the petitioner's contumacy to the House of Representatives (U.S. Ex. 2; R. 49), and the House certified the Committee's report to the United States Attorney for prosecution (H. Res. 685, 85th Cong., 2d Sess.; U.S. Ex. 13).

The government offered the following evidence at petitioner's trial: The Committee on Un-American Activities passed a resolution providing that public hearings be held to inquire into "[t]he extent, character, and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South," "[e]ntry and dissemination within the United States of foreign Communist Party propaganda," and "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (U.S. Ex. 1, pp. 2605-2606;² see Pet. 10-11, note 1). Pursuant to this resolution, the Chairman of the Committee designated a three-man subcommittee to hold a public hearing in Atlanta, Georgia, on July 29, 30, and 31, 1958 (U.S. Ex. 1, p. 2606). At the opening of the hearing, on July 29, the Chairman of the Committee stated that "[t]he hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation" and were specifically designed to investigate information that "the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North" (*id.* at 2606, 2607). Petitioner stipulated at the trial that he had heard this statement.

² U.S. Ex. 1 is the printed transcript of the hearings on July 29, 30, and 31, 1958, before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Communist Infiltration and Activities in the South."

Petitioner appeared before the subcommittee on July 30. At that time the Committee had information that petitioner had been for a long period a member of the Communist Party, that he had previously been sent to Atlanta by the Party to conduct Communist activities in the South, and that he had been selected by the Party to lead the infiltration into the South of the Emergency Civil Liberties Committee which was allegedly a Communist front (R. 57-58).

After petitioner was sworn he stated his name, but refused to answer a question as to his residence.^{*} Instead, he said, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee" (U.S. Ex. 1, p. 2681). He then gave the same answer to a question concerning his occupation. And, when he was asked the question, "Mr. Wilkinson, are you now a member of the Communist Party?", he again gave the same answer (*ibid.*).

The Staff Director of the Committee then stated at length to the witness the authority of the Committee and the purposes of the current investigation. (U.S. Ex. 1, p. 2682). He described the information which the Committee possessed that petitioner was "a hard-core member of the Communist Party," had been designated by the Party to create and manipulate certain organizations, including the Emergency Civil Liberties Committee, and had been sent to the Atlanta area by the Party for the purpose of developing sentiment hostile to the Committee in an attempt

^{*} Although petitioner did not have counsel present, he stated that he knew that he had this privilege (U.S. Ex. 1, p. 2681).

to prevent the hearings (*ibid.*). He further said that, if the petitioner answered the question concerning his Party membership, the subcommittee would then inquire concerning petitioner's activities "as a Communist on behalf of the Communist Party," his activities from the standpoint of propaganda, and his activities attempting to destroy the F.B.I. and the Committee (*id.* at 2683).

The Staff Director then repeated the question: "Are you now a member of the Communist Party?" (U.S. Ex. 1, p. 2683). Petitioner answered: "I am refusing to answer any questions of this committee" (*ibid.*). After the Staff Director requested the Chairman of the subcommittee to order petitioner to answer the question, the Chairman again explained the purpose of the hearing: "[a]mong other reasons for pertinency of these hearings, would be the development of information which we feel you have, sir, that you could shed light on the current methods of organizing or regrouping or reconstructing of the party and subdivisions thereof" (*id.* at 2683). The Chairman of the subcommittee warned petitioner that "we disagree with your position as a basis for possible contempt proceedings" (*ibid.*), but advised him that he had the right to invoke the Fifth Amendment if he feared that his answers might incriminate him (*id.* at 2683-2684). The Chairman then ordered petitioner to answer the question concerning petitioner's Party membership (*id.* at 2684). Petitioner again refused to answer "any questions of this committee" on the ground that the "committee stands in direct violation by its mandate and by its practices of the first amendment" (*ibid.*).

At the close of the government's case—the defense offered no evidence—the district court ruled as a matter of law that the subcommittee had the right to ask the question concerning petitioner's membership in the Communist Party, that the question was pertinent to the subject under inquiry of the subcommittee,* and that therefore petitioner had a duty to answer it (R. 97). The jury subsequently found petitioner guilty. On appeal to the Court of Appeals for the Fifth Circuit, the conviction was affirmed.

ARGUMENT

Petitioner's contentions, with but minor variations, were fully answered by this Court last Term in *Barenblatt v. United States*, 360 U.S. 109. We submit that there is no basis for asking the Court to reconsider the issues decided there.

1. Petitioner contends (Pet. 7-8) that Congress did not authorize the Committee to investigate propaganda activities against itself. This contention, however, is without substance on two grounds. First, this Court held in *Barenblatt* that "the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country." 360 U.S. at 118. For this reason, the Court refused to construe Rule XI (H. Res. 5, 83d Cong., 1st Sess.), which established the Committee, to exclude the field of education from the Committee's authority. There is no more reason to construe Rule

* The court submitted to the jury the issue whether the pertinency of the question and its relation to the subject under inquiry were sufficiently explained to the petitioner by the subcommittee (R. 100).

XI to exclude the field of propaganda—at least when, as in the instant case, the Committee has information that the propaganda is being carried on at the direction of the Communist Party.

Second, the subcommittee's inquiry was not limited to petitioner's propaganda activities. At the beginning of the hearing, the Chairman of the Committee made clear that it was directed generally to Communist activities in the South and particularly those directed by Communist agents in northern cities (see *supra*, p. 3). Similarly, in reformulating the question, the Staff Director explained to petitioner that the subcommittee was investigating not only his propaganda activities but his activities on behalf of the Communist Party in general (see *supra*, p. 5). And, just before petitioner was ordered to answer the question, the Chairman of the subcommittee expressly stated that the subcommittee was questioning him, among other reasons, as to the organization and reconstitution of the Party (see *supra*, p. 5).⁵

Thus, the record demonstrates that petitioner had been fully informed that the subcommittee's inquiry

⁵ The subcommittee had authority to inquire into Party activities beyond those specifically stated in the resolution of Committee providing for the hearings since the subcommittee was also authorized by the resolution to investigate "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (see *supra*, p. 3). The Staff Director of the Committee clearly indicated, in testifying at petitioner's trial, that the subcommittee's inquiry was not limited to the three purposes specifically stated in the resolution (R. 69-70) and that petitioner was not being questioned solely concerning his propaganda activities directed against the Committee (R. 68).

was with regard not merely to propaganda but also to petitioner's other activities and information respecting the Communist Party. Even if we assume *arguendo* that the field of propaganda is not within the Committee's powers, nevertheless Communist Party organization and activities clearly are.

2. (a). Petitioner claims (Pet. 8-10) that, if Congress authorized the Committee to investigate propaganda activities against itself, such authorization violated the First Amendment. Petitioner's contention is answered by our showing above that the subcommittee's inquiry was not merely into petitioner's propaganda activities. But even if this were not so, this Court's holding in *Barenblatt* is conclusive. There, the Court held that the First Amendment does not bar inquiry concerning membership in the Communist Party, even in an area (higher education) as much related to the First Amendment as that involved here. See *id.* at 125-132; see also *Davis v. United States*, 269 F. 2d 357 (C.A. 6), certiorari denied, 361 U.S. 919.

(b). Petitioner's related argument (Pet. 10-12) that the Committee did not have a legislative purpose in subpoenaing petitioner but rather intended to harass or expose him is equally without merit. This Court has held that the federal courts should not inquire into the motives of committee members as long as a congressional purpose is being served. *Watkins v. United States*, 354 U.S. 178, 200; *Barenblatt v. United States*, *supra*, 360 U.S. at 133. And, moreover, the record of the hearing, as well as the record at the

trial, is completely devoid of any evidence that any of the Committee members had an improper purpose.

The information in the Committee's possession justified it in questioning petitioner concerning the subjects under inquiry. Certainly, the Committee's information, that petitioner was a leading and "hard-core member of the Communist Party" (see *supra*, p. 4), was a sufficient basis to query him concerning his Party activities and the Party's reorganization. And the Committee's further information that petitioner was a leader of Communist infiltration in the South who had previously come to Atlanta for this purpose (*supra*, p. 4) made it reasonable to query him concerning whether he was, in fact, one of the Party's northern agents whom the Committee believed was directing Party activities in the South (see *supra*, p. 3). While petitioner had refused to answer questions before a subcommittee in California in 1956, it was not improbable that by 1958 he might have changed his mind. Cf. *Flaxer v. United States*, 358 U.S. 147, 151.

3. Lastly, petitioner argues (Pet. 13-16) that the question asked petitioner was not pertinent to the matter under inquiry. Petitioner, however, failed to raise this objection before the subcommittee and, under this Court's decision in *Barenblatt, supra*, 360 U.S. at 123-124, is precluded from initially raising it in his contempt proceeding. Moreover, the record demonstrates not only that the question concerning Party membership was pertinent to the subject under inquiry but that this relation was explained to petitioner (see *supra*, pp. 4-5). The question of whether

petitioner was a Party member was directly pertinent to whatever succeeding questions the subcommittee might have asked concerning the Party's reorganization and reconstruction (since the Committee had information that petitioner was a leading Party member), the Party's propaganda activities in the South (since it had information that petitioner participated in such Party activities in that area), and the direction of the Party in the South by northern agents (since it had information that petitioner was a leader of Party infiltration in the South).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

J. WALTER YEAGLEY,
Assistant Attorney General.

GEORGE B. SEARLS,

LEE B. ANDERSON,
Attorneys.

MARCH 1960.

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CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

J. WALTER YEAGLEY,
Assistant Attorney General.

GEORGE B. SEARLS,
LEE B. ANDERSON,
Attorneys.

MARCH 1960.

FILED

SEP 15 1960

JAMES R. BROWN NG. C.

IN THE

Supreme Court of the United States

October Term, 1960

No. 37

FRANK WILKINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit**

BRIEF FOR THE PETITIONER

**NANETTE DEMBITZ,
ROWLAND WATTS,**

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IN THE
Supreme Court of the United States

October Term, 1960

No. 37

FRANK WILKINSON,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

**On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit**

BRIEF FOR THE PETITIONER

Opinions Below

The opinion and order of the Court of Appeals entered on December 14, 1959 (R. 63), is reported at 272 F. 2d 783. The District Court issued no opinion.

Jurisdiction

The opinion and judgment of the United States Court of Appeals was entered December 14, 1959 (R. 63). A petition for rehearing was denied on January 14, 1960 (R. 70). The petition for a writ of certiorari, filed February 12, 1960, was granted on March 28, 1960 (R. 267). The jurisdiction of this Court rests on 28 U. S. C. 1254(1).

Constitutional and Statutory Provisions Involved

Constitution of the United States

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V. No person shall * * * be deprived of life, liberty, or property without due process of law * * *.

Statutes

2 U. S. C. Section 192, R. S. 102, 52 Stat. 942, as amended:

Refusal of witness to testify.

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any questions pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month or more than twelve months.

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress read in relevant part:

(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

Rule XI

Power and Duties of Committees.

(1) All proposed legislation, messages, petitions, memorials, and matters related to the subjects listed

under the standing committees named below shall be referred to such committees, respectively:

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Questions Presented

I. Whether the requirements of the contempt statute were satisfied in that the question petitioner refused to answer was pertinent to a question under inquiry. Whether the requirements of due process were satisfied by the pertinence of the question petitioner refused to answer being made indisputably clear to him.

II. Whether Congress authorized the Committee to investigate public opposition to it, and whether the Committee conferred such authority on the instant subcommittee.

III. Whether petitioner's conviction violates the First Amendment.

IV. Whether the Committee had a legislative purpose in subpoenaing petitioner, or rather the unlawful purpose of harassing or exposing him.

Statement of the Case

Proceedings Below

Petitioner, Frank Wilkinson, was indicted in the District Court for the Northern District of Georgia under an indictment charging violation of 2 U. S. C. § 192 for refusing to answer a question before a subcommittee of the House Committee on Un-American Activities in a hearing in Georgia on July 30, 1958 (R. 1). The indictment charged, in substance, that petitioner "unlawfully refused to answer" the following question "pertinent to the question then under inquiry . . . Are you now a member of the Communist Party?"

The District Court decided as a matter of law that the questions asked petitioner "were pertinent to the subject matter under investigation . . ." and "that the committee had the right to ask this question and the defendant had the duty to answer" it (R. 57). The District Judge submitted to the jury the question of whether the pertinency was made apparent to appellant "with undisputed clarity" (R. 60).

Petitioner was convicted and sentenced to the term of 12 months (R. 3), the maximum provided by statute.

The Court of Appeals affirmed the judgment of conviction (R. 63); it did not, however, attempt to summarize or specify the subject of the hearings, merely quoting the entire statements of the Committee chairman and of the Committee's counsel. It further held that the investigation was authorized and constitutional, stating that "The appellant here admitted that he was engaged in aggressive opposition to the continued functioning of the Committee . . . [I]t was within the province of the Committee to make inquiries to ascertain whether Un-American Communist influences were attempting to weaken the Government by impeding and crippling the operation of its legislative branch" (R. 69).

The Subcommittee Proceedings

In December of 1956, petitioner had been subpoenaed to appear before a different subcommittee of the House Committee on Un-American Activities that was then conducting hearings in Los Angeles. He did so appear before the Committee but refused to answer any questions, stating his reasons for such refusal in substantially the same terms as he stated such refusal to answer in the hearings that resulted in the instant case (R. 35-36).

The subcommittee conducting the instant hearings was authorized by the full Committee to investigate the following:

"1. The extent, character and objects of Communist colonization and infiltration in the textile and other industries located in the South, and the Communist Party propaganda activities in the South, the legislative purpose being:

(a) To obtain additional information for use by the Committee in its consideration of Section 16 of H.R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

(b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate." (Govt. Exh. 1, R. 79)

At the commencement of the subcommittee's hearings in Atlanta, Georgia on July 29, 1958, the chairman made an opening statement of its purpose, referring generally to the jurisdiction and past achievements of the full Committee and of the present danger to the country of the Communist Party (R. 80-82). Petitioner was present during this statement of purpose of these particular hearings (R. 34). The first witness was Armando Penna, a former member of the Communist Party (at the request of the FBI). He discussed at some length the efforts of the Party to "colonize" the textile industry generally and particularly in the South (R. 83-96, 98-102). His testimony was not confined to this, however, and under questioning he discussed whether or not a Communist Party member could attend church (R. 96), the difference between a united front and a Party front (R. 97), and the Party's efforts in opposition to the Walter-McCarran Immigration and Nationality Act (R. 97). The next witness, Eugene Feldman, refused to testify on the basis of his rights under the First and Fifth Amendments (R. 104-109). He was followed by Irving Fishman, who discussed the influx of Communist political propaganda from abroad (R. 109-117). The next witness was Perry Cartwright, the business manager of the *Southern Newsletter*. The questions asked him primarily concerned this publication, which was not otherwise described. These questions elicited the information that while the paper had a Louisville, Kentucky, mailing address it was in fact printed in Chicago (R. 119). Further questions concerned whether or not certain persons were identified with the publication (R. 120-121) and background information as to where the witness had lived and gone to school (R. 121-122). He was also questioned about a publication called the *Southerner*, which apparently dealt with race relations (R. 121).

The following witness, Clara Hetcherson Saba, was questioned about her labor union activities in the South and her relationship to the Communist Party. She was also questioned about the reason for her discharge from employment after she had received a subpoena to appear before the subcommittee. She was followed on the witness stand by her husband, Mitchell Saba, whose interrogation, outside of background information about his life, was primarily confined to trying to elicit from him a statement as to why he did not apply for employment at the Radford Arsenal in Virginia; he testified that his only employment in the South was work on a farm and peddling vegetables in Atlanta, Georgia (R. 138).

The following day, on July 30, 1958, the first witness before the subcommittee was Carl Braden. He was questioned concerning his employment as Field Secretary of the Southern Conference Educational Fund (R. 142), his relation to a petition submitted to the Congress by 200 Negro leaders in the South (R. 147), a meeting held in the American Red Cross Building in Atlanta (R. 151), and a letter which he and his wife had addressed to friends urging them to write to the Congress concerning pending legislation (R. 153). The petitioner was the following witness.

Petitioner's Testimony Before Committee

After identifying himself on the stand, the petitioner was advised by the Committee's counsel of the general powers and duties of the Committee (R. 156). The Committee's counsel then stated to him:

"It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertak-

ing to bring pressure upon the United States Congress to preclude these particular hearings. It is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta." (R. 156.)

Petitioner objected to answering the questions put to him by the Committee, stating:

"I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.

I am, therefore, refusing to answer any questions of this committee." (R. 158.)

The Committee's counsel then introduced into evidence a reproduction of petitioner's registration at the Atlanta Biltmore Hotel on July 23, 1958, on which petitioner had indicated that his business firm association was the "Emergency Civil Liberties Committee" (R. 159). He was fur-

ther questioned concerning various long distance phone calls allegedly made by him from his hotel room (R. 160). Petitioner continued to refuse to answer all questions.

Thereafter petitioner was cited by the Congress for contempt and subsequently indicted.

Summary of Argument

I. For a valid conviction under the contempt statute, a legislative committee must have had a definite subject under inquiry, and the question the witness refused to answer must have been pertinent to that subject. These requirements were not here satisfied, because the subject of the hearing was vague and uncertain in the extreme. The statements of the committee chairman and counsel indicated that the entire field of internal security was the subject of the hearings, and that they encompassed the whole area covered by the Committee's mandate.

In the absence of pertinence it was an impossibility for pertinence to be made indisputably clear to petitioner, and thus the requirements of due process, established in this Court's *Watkins* decision, were not satisfied.

II. The Committee's purpose in summoning and questioning petitioner was to investigate his public efforts to persuade people of the Committee's inutility and that Congress should abolish it. There is nothing in the legislative history to indicate that Congress intended to grant the Committee this novel and dangerous power to investigate individuals because they publicly criticize and oppose the Committee. Since this investigative authority would lie in a highly sensitive Constitutional area, not only affecting the general rights to freedom of expression, but also the right to petition the government for a redress of grievances, the Committee mandate should not be construed to include this authority.

Even if the Committee itself is deemed to have the power to investigate public criticism of it, the resolution authorizing the Atlanta hearings in which petitioner testified does not specify that the subcommittee has such authority; and it should not be construed to grant power in a highly sensitive Constitutional area in the absence of clear and definite language.

III. Petitioner's conviction violates the First Amendment, because the infringement of the rights to free expression and to petition the government for a redress of grievances was not here out-balanced by considerations of the national security. On the one hand, the right to criticize a government agency and to rally opinion in favor of legislative change is a most crucial aspect of the First Amendment protection. And there is no doubt under the opinions of this Court that the Committee's power to summon and question its opponents is a deterrent to criticism. On the other side of the balance, there is no indication from the Committee's information about petitioner and its purpose in questioning him, of any concern with foreign domination, revolutionary activity, or overthrow of the Government—factors to which this Court pointed as justification in *Barenblatt v. United States*. Overthrow of the Government, as an ultimate Communist purpose, cannot justify an investigation of activity that is its very antithesis—that is, public efforts to persuade people of the necessity for legislative change.

IV. Since the subcommittee subpoenaed petitioner because he was thought to have come to Atlanta for the purpose of rallying sentiment against the Committee, it is clear that he was not called because of a connection with the matters which the subcommittee was studying for legislative purposes. By summoning him on the spot in the midst of his efforts to persuade people of the Committee's

inutility, the Committee used its subpoena power to stop him, attempted to discredit him, and, thus sought to deter attempts to rally sentiment against the Committee by petitioner or others in the area.

ARGUMENT

I. The question petitioner refused to answer was not pertinent to a question under inquiry, and the requirements of the contempt statute were, therefore, not satisfied. The pertinence of the question petitioner refused to answer was not made indisputably clear to him, and the requirements of due process were, therefore, not satisfied.

Requirements for a valid conviction under the contempt statute (2 U. S. C. 192), as interpreted by the decisions of this Court are that a legislative investigating committee have an ascertainable subject under inquiry, and that the question the witness refused to answer is pertinent thereto.¹ The subject of the hearing on which this indictment is based was vague and uncertain in the extreme; thus neither of these statutory requirements was satisfied.

At the outset of the hearings the resolution authorizing them was incorporated in the record. The subjects for investigation specified in the resolution were Communist infiltration of the textile and other Southern industry, Communist propaganda in the South, dissemination of Communist propaganda from abroad, and any other subjects designated by the Committee or subcommittee (R. 79-80). (There is no record that any other were designated.) In opening the hearing, however, the chair-

¹ See *Barenblatt*, 360 U. S. 109, at pp. 123-4; *Watkins*, 354 U. S. 178, at pp. 207-214.

man stated that the Committee was responding to its power and duty to accumulate factual information respecting the entire field of internal security (R. 80). During the questioning of the witnesses preceding petitioner, which covered a variety of subjects (pp. 5-7, *supra*), there were no statements delimiting the questions under inquiry. At the outset of petitioner's questioning, however, committee counsel repeated in summary form the chairman's statement, stating that the purpose of the hearings was, in effect, to cover the whole field of internal security (R. 156); the subcommittee member then acting as subcommittee chairman then added to this pronouncement (R. 157).

The court below quoted these statements of the committee chairman and counsel without itself attempting to identify the subject of the hearing (R. 63-67). Petitioner urges that there was no subject that was sufficiently clear, specific and definite to constitute a "question under inquiry" within the meaning of the contempt statute. The subject matter was in effect as broad as the mandate of the Committee. Compare *Watkins*, 354 U. S. at p. 209, *Barenblatt*, 360 U. S. at p. 117. Under these circumstances a necessary pre-condition for pertinency was lacking. Two statutory components of the crime of contempt—a definite question under inquiry and a question pertinent to that inquiry—are absent.

In the absence of a definite subject it was impossible for pertinency to be made indisputably clear to petitioner, and thus for the requirements of due process, established in *Watkins*, to be satisfied. If the witness' behavior at the hearing is deemed crucial with respect to the right to raise the due process point,² we suggest that a general objection to the investigation, such as petitioner's, should be regarded as sufficient. Particularly when he appears without counsel, an objection in the technical terms of

² See *Barenblatt*, 360 U. S. 109, at p. 123.

"pertinency" should not be required. Petitioner's objection included his view that he did not comprehend the basic purpose of the investigation or the reason for calling him (R. 155). Furthermore, since Committee counsel had, directly before petitioner's objection, explained pertinency by referring to subjects as inclusive as the Committee's mandate (R. 155-156), it was appropriate for a pertinency objection to refer generally to the Committee's mandate.³

II. Congress did not authorize the Committee to investigate public opposition to it, nor did the Committee confer such authority on the instant subcommittee.

The petitioner was subpoenaed to appear before the subcommittee's hearing in Atlanta because, in the words of the Committee's counsel, of information that he was "sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. It is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose." (R. 156.)

Not only is it clear from counsel's statement that petitioner's interrogation must be appraised from the standpoint of whether the Committee had power to investigate criticism of itself, but this is also clear from other circumstances. Conducting rallies and meetings to persuade people that Congress should abolish the committee was the only activity by petitioner on which the committee had information (R. 30) and which also might be deemed to bear any

³ Since the question was impertinent as a matter of law, its pertinence could not be made clear, and the jury's finding on this point is nugatory.

relation to the subject under investigation.⁴ Furthermore, petitioner's connection with propaganda against the Committee (and the FBI) was the only reason for calling him that is mentioned in the Committee summary of the hearings (R. 78).

The court below upheld the Committee's authority to investigate petitioner's opposition to the Committee, on the basis that under this Court's *Barenblatt* decision the Committee's authority should be held to include "the power to investigate activities directed to interference with the legislative processes and their functioning" (R. 69).

There was nothing in the record to indicate that the petitioner was in any way attempting to interfere with "the legislative processes and their functioning." On the contrary it is abundantly clear that he came to Atlanta and registered at the hotel as the open representative of the Emergency Civil Liberties Committee (Govt. Exh. 1, R. 159), which was carrying on a public campaign to persuade persons to urge the Congress to abolish the House Committee on Un-American Activities.

Such an activity is clearly addressed to petitioning the Government for redress of grievances protected by the First Amendment and cannot be presumed to come within the Congressional authorization to the Committee to investigate "un-American propaganda activities" with the view of enacting or revising legislation in the field.

⁴While committee counsel, apparently for the purpose of all inclusiveness in the event of litigation, listed some general topics on which petitioner was to be questioned, they either were not matters with which he was thought to have any connection or were not related to the authorized subjects of investigation. (See R. 30-33, 156-157.) Similarly, the question mentioned by the chairman of the subcommittee—the re-organization of the Communist Party (R. 157)—was not an authorized subject, nor, indeed, one that the subcommittee was investigating.

The court below, relying on this Court's upholding of the Lobbying Act in *United States v. Harriss*, 347 U. S. 612, held that, "Since legislation in the area may be enacted, investigations by legislative agencies are authorized" (p. 787).

Here the court erred. To hold as it must have intended that such investigations *may be authorized* is far from holding that such investigations by this particular Committee *had been authorized*. This Court in *Barenblatt, supra*, held that the "persuasive gloss of legislative history" had corrected whatever Constitutional infirmities by reason of vagueness this Committee's mandate may have had. However, there is nothing in the legislative history indicating the Committee was granted the novel and dangerous authority to investigate individuals because they publicly criticize and oppose the Committee.

The power to investigate the expression of a viewpoint is undoubtedly the power to discourage its further expression (*infra*, p. 18). It is unprecedented for a government agency to have the power to deal coercively with its critics; even the judicial branch, with greater claim than the legislative to insulation from public opinion, must tolerate criticism (see p. 17, *infra*).

The authority here claimed by the Committee lies in the area protected by the First Amendment not only because it affects freedom of expression, but also because it affects the right to petition for a redress of grievances which is specifically protected by the Amendment. The Committee's mandate should be construed to avoid this Constitutional danger zone. The Court recognized this danger in *Harriss, supra*. Mr. Chief Justice Warren, speaking for the Court, construed the Lobbying Act "narrowly to avoid constitutional doubts" (p. 623). He stated at page 620, "[W]e believe this language should be construed to refer only to 'lobbying in its commonly accepted sense'—to direct

communication with members of Congress on pending or proposed Federal legislation." And, at page 625: "Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities."

Congress has made no effort to expand this definition of "lobbying" and in any event the petitioner has been unable to find any indication that Congress intended to authorize this Committee to investigate lobbying activities however defined.

We have not here dealt with the problem of the Committee's authority to question anyone that a prior witness or confidential informant has allegedly said was known to the witness or informant as a Communist. (See R. 158.) Whatever may be the scope of this authority, it is clear that the subcommittee did not call petitioner to question him about the alleged Communist activity to which a witness had testified or an informant had submitted information, or because of his connection with other alleged Communist activity under investigation, but rather because of his opposition to the Committee. (See pp. 13, 14, *supra*, at note 4.)

. . .

Even if the mandate of the Committee itself should be construed to include investigation of such public criticism of a committee of Congress as is here involved, the resolution establishing these particular hearings in Atlanta (pp. 5, 6, *supra*) certainly does not specify the authority for such an investigation. The resolution should not be deemed to confer authority that is unprecedented and in a highly sensitive Constitutional area, in the absence of a clear and definite grant.

III. Petitioner's conviction violates the First Amendment.

The Court below held that petitioner's conviction was valid under the First Amendment, because Congress has power to regulate lobbying activities and because

"The activities in which the appellant was believed to be participating presented a more direct threat to the national security than those of which Barenblatt was suspected. The decision in the *Barenblatt* case is controlling here." (R. 69)

We urge that the conviction cannot be upheld under the First Amendment on these or any other grounds because the activities in which petitioner was believed to be participating consisted of public criticism of the Committee and attempts to influence public opinion to petition Congress for redress—to abolish the Committee.

In *Barenblatt, supra*, this Court, as it has in its other decisions dealing with the limits of the Congressional power to investigate, recognized that First Amendment validity depends on a "balancing" of competing rights and interests. The right here at stake requires the highest protection, for the very purpose of preserving First Amendment rights is "to the end that government may be responsive to the will of the people." *DeJonge v. Oregon*, 299 U. S. 353, 365. The decisions of this Court recognize that freedom to criticize an agency of government is essential to this First Amendment end, and that an agency's power to coerce and crush criticism is antithetical to our form of government. See *Bridges v. California*, 314 U. S. 252, 269-271; see also *Pennekamp v. Florida*, 328 U. S. 331, 346-7; *Craig v. Harney*, 331 U. S. 367, 374-5. Even with respect to criticism of pending judicial proceedings, this Court said "no suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and

importance of the ideas seeking expression", and affirmed the rights to expression and petition protected by the First Amendment. See *Bridges*, 314 U. S. at p. 277.

There can no longer be any question that the Committee's power to summon, question, and expose witnesses serves as a coercion and a deterrent.⁵ The threat of a Committee summons and interrogation is a potent one. Even assuming *arguendo* that the Committee intended to question petitioner on other matters besides his opposition to the Committee, there is no doubt that the activity which stimulated the subcommittee's summons was his opposition to the Committee. Thus, the summons and questioning of petitioner necessarily acts as a deterrent to criticism of the Committee. If petitioner's conviction is upheld, the Committee can use its investigatory power to harass and intimidate its critics, and thus to interfere with First Amendment rights in their most vital aspect.

On the other side of the balance, the "national security" interest to which the court below adverted, seems highly insubstantial. Assuming *arguendo* that the Committee is important to national security, its existence is hardly to be immunized from the customary play of opinion and responsiveness to the will of the people. Nor is control of public opinion with respect to the work of Congressional committees within the legislative powers of Congress. (Compare *Harriss v. United States*, quoted p. 15, *supra*.); indeed, there has been no suggestion that such legislation could be enacted, or that the Committee conceived of this possibility.

In the *Barenblatt* opinion this Court pointed out in justification for the investigation, that there was "considerable testimony concerning the foreign domination and

⁵ See *Watkins*, 354 U. S. at pp. 197-198; compare *Barenblatt*, 360 U. S. at p. 134; see *N.A.A.C.P. v. Alabama*, 357 U. S. 449; *Bates v. Little Rock*, 361 U. S. 516; *Talley v. California*, 362 U. S. 60.

revolutionary purposes and efforts of the Communist Party" (360 U. S. at pp. 131-132), and that the committee was there concerned with infiltration for the purpose of attempting to overthrow the government. In the Committee's information about petitioner and its purpose in summoning him (See R. 30; 156.), there is no indication of concern with foreign domination, revolutionary activity, or efforts to overthrow the government. If the alleged ultimate Communist purpose of overthrow is sufficient to warrant an investigation of public efforts to persuade people of the necessity for legislative change—an investigation of activity that is the antithesis of violence—then indeed committees are empowered to "radiate outwardly infinitely." (*Watkins v. United States*, 354 U. S. 178, 204.)

The Committee will have vast and dangerous power to coerce its critics and thus suppress criticism if petitioner's conviction is upheld. In *Uphaus v. Wyman*, 360 U. S. 72, this Court held that a legislative committee did not violate the First Amendment in investigating meetings and other propaganda activities even if neither past nor present Communist Party membership was alleged against the witness, and even if he was questioned about persons against whom there was likewise no allegation of membership. (See 360 U. S. at p. 79.) If this Court now holds the First Amendment is no barrier to Committee investigation of public opposition, the Committee can summon and pillory anyone who criticizes it, with an allegation, at the most, of purported information that he has some tangential or third or fourth-hand association with the Communist Party.

IV. The Committee did not have a legislative purpose in subpoenaing petitioner, but rather the unlawful purpose of harassing or exposing him.

It is clear that the subcommittee subpoenaed petitioner because he was thought to have come to Atlanta for the purpose of rallying sentiment against the Committee. (See pp. 13; 14, *supra*.) Thus, we can put to one side the possibility that he was called because of some connection with the textile industry or with any of the Southern activities on which the subcommittee had been gathering information. The Committee, therefore, cannot be thought to have summoned petitioner because of the legislative proposals it was considering.

While the subcommittee spoke of the petitioner's coming to Atlanta "to disrupt the committee hearings" (R. 78), there is no indication in the hearings or otherwise of any physical interference or verbal disturbance at the hearings. Thus, it was not concerned with disruption in this sense. Disruption, to the committee, meant opposition asserted through peaceful political expression and lawful means. But Congress cannot, constitutionally, legislate against criticism of the committee, and indeed the committee does not even assert the power to deal with its critics and opponents through legislation. We, therefore, urge that here no motive can be attributed to the committee except to harass and discredit petitioner. By summoning him on the spot in the midst of his efforts to persuade people of the Committee's inutility, the Committee used its subpoena power to stop him, attempt to discredit him, and to deter attempts to rally sentiment against the committee by petitioner or others in the area.

That that purpose, together with laying the basis for a contempt charge, was the Committee's motive in questioning petitioner, is also demonstrated by the fact that the Committee had previously called petitioner and he had

previously stated his refusal to cooperate with the Committee.

In December of 1956, the petitioner had been subpoenaed to appear before hearings of the Committee at Los Angeles. He there declined to answer the questions of the Committee and made essentially the same statement of reasons for declining to answer them (R. 66).

Petitioner's case is clearly distinguished from *Flaxer v. United States*, 358 U. S. 147, where the Senate cited for contempt after Flaxer was given ten days to produce certain documents but thereafter was not called back before the Committee or otherwise ordered to produce them. This Court, in reversing the resulting conviction, said: "[A] witness who was adamant and defiant on October 5 might be meek and submissive on October 15" (at p. 151).

Here the case is different. During the nineteen-month period following petitioner's refusal to answer questions put to him by the Committee not only was he not "meek and submissive" but he had carried on a continuous public campaign for the abolition of the Committee of which the Committee was well aware (Govt. Exh. 1, R. 156). Indeed, according to counsel for the Committee, "you were not even subpoenaed to appear for these particular hearings until we learned that you were in town"⁶ for that very purpose (R., *ibid.*). Under these circumstances there clearly was no reasonable possibility that petitioner would change his views on the Constitutional necessity to refuse to answer questions of the Committee. The only possible purpose of forcing his appearance was to harass by exposure and thus attempt to discredit his criticism of the Committee itself.

⁶ Counsel should have said, "were coming to town" because actually the subpoena was issued in Washington the day before and was served in Atlanta within an hour after Wilkinson's arrival (R. 41).

CONCLUSION

For the foregoing reasons, the judgment below should be reversed and the conviction of the petitioner held invalid.

Respectfully submitted,

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OCT 7 1960

JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States

October Term, 1960

No. 37

FRANK WILKINSON

vs.

UNITED STATES OF AMERICA

BRIEF OF *AMICUS CURIAE* NATIONAL
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**BRIEF OF *AMICUS CURIAE* NATIONAL
LAWYERS GUILD**

Introduction

The National Lawyers Guild is a national bar association among whose principles is the preservation of basic constitutional rights and liberties. It submits this brief because it believes that this case presents an important question of constitutional law, whether a Congressional Committee can lawfully subject American citizens to interrogation solely because of their criticism of the Committee. It is solely to this issue that the National Lawyers Guild addresses itself with the consent of counsel for both parties.

At Bar the Process and Power of a Committee of Congress Has Been Directed Against a Citizen Because of Activity Undertaking Lawful Review of Said Committee by Its Constitutional Superior, the People of the United States. The Constitution, in Fundamental Manner, Restrains and Prohibits Any Employment Thus of Legislative Power by Any Legislative Agency to Influence or Affect Its Own Review and Perpetuation.

The Committee below * as the Record and the Court of Appeals' opinion make clear, directed its investigational and subpoena powers against the petitioner, Frank Wilkinson, only because it was informed he was "sent . . . by the Communist Party" to the site of hearings by the Committee, July 29, 1958, at Atlanta, Georgia "for the purpose of developing a hostile sentiment to [the] committee and to its works for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings." **

The object of the Atlanta hearings, as expressed in the authorizing Resolution therefor, was to investigate "The extent, character and objects of the Communist colonization and infiltration in the . . . basic industries in the South, and Communist Party propaganda activities in the South" [Gov't Ex. 2, p. 3; Pet., p. 10, fn. 1] but no claim was extended that petitioner had any information or knowledge pertaining to said described subjects, nor even that he had ever previously been in the South [Pet., p. 11].

That the thrust of the Committee's acts was directed against peaceful petitioning for governmental redress and review was underscored by references on the Committee's part to a report previously issued by it entitled "Operation

* Actually the sub-committee of the Committee on Un-American Activities of the House of Representatives.

** Petition for Certiorari, Appendix B, opinion of Court of Appeals, p. 8a, fn. 1, hereafter cited: Pet., App. B, p. 8a, fn. 1.

Abolition".* Committee counsel referred petitioner expressly to that report as part of the basis and grounds for his investigation.** The report sets forth as prime examples of the activities protested by the Committee, a leaflet issued by the Emergency Civil Liberties Committee, with which defendant was connected, calling upon the American people for opposition to the Committee, including notably the following:

"(1) *Personal Letters and Visits to Congressmen.*

The most important part of the ABOLITION CAMPAIGN is to urge the individual citizen to—

- (a) Visit his Congressman;
- (b) Write his Congressman; and
- (c) Write the editor of his newspaper.

"(6) *Petitions to Congress.* Petitions to Congress should be encouraged. Those from local groups should be directed either to the Congressman of the specific community or to the several Congressmen of a city or State. Petitions from national organizations should be directed to the full House of Representatives through the House Speaker, Sam Rayburn. . . .

"(11) *Literature.* Since copies of the Watkins decision are no longer available from either the United States Supreme Court or the Superintendent of Documents, Washington, D. C., the ECLC has undertaken to reprint 5,000 copies for national distribution. Copies are available at 15 cents each, including postage, for local distribution to individuals and organizations." ***

* "Operation Abolition", issued November 8, 1957 by the Committee, printed by the United States Government Printing Office.

** Pet., App. B. p. 8a, fn. 1.

*** Report, "Operation Abolition", *supra*, App. pp. 17-18.

At the outset we urge the following premises, which the subsequent discussion is intended to support. If the Committee, or any other legislative body or agency, may lawfully exercise coercive, investigative or any other power over the citizen solely because of an appeal to the people for lawful review of such agency's record, the free and sovereign control by the people over all agencies of government is undermined. The mandate of the Committee should not be so construed or applied as to authorize the employment of investigative powers coercively against a citizen because of an appeal by such citizen for a review of the Committee's works by the people within the processes of law. As in *United States v. Rumely*, 345 U. S. 41, construction should be had avoiding such fundamental constitutional issues.

I

Integral to "the nature and theory of our institutions of government" is the final supremacy of the people over all other agencies of government, executive, legislative and judicial; in "the people" is reposed "the plenitude" of sovereignty and they constitute "the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage." (*Yick Wo v. Hopkins*, 118 U. S. 356, 369, 370; *Chisholm v. Georgia*, 2 U. S. (2 Dallas) 419, 470.) "Sovereignty is the right to govern", and in our Constitutional form of government its final powers "reside" in "the people" (*Chisholm v. Georgia, supra*, p. 471), who in the first instance created and "ordained" the Constitution and all of the bodies of government and who exercise thereover continuing plenary authority. (*Martin v. Hunters' Lessee*, 14 U. S. (1 Wheat.) 304, 324-325; *McCulloch v. Maryland*, 17 U. S. (4 Wheat.) 315, 402-404.)

"[In] Britain [all ultimate] power is lodged in the British Parliament. * * * But here, Sir, the fee-

simple [of liberty] remains in the people at large, and by this Constitution they do not part with it. * * * If a legislature shall make a law contrary to the Constitution, or oppressive to the people, they have it in their power, every second year, in one branch, and every sixth year, in the other, to displace the men who act thus inconsistently with their duties. * * * [T]hey may revoke the lease when the conditions are broken by the tenant."—Remarks of James Wilson, 2 Elliot's Debates, pp. 432, 434, 436.*

Petitioner, in invoking the people's review processes including the ballot and the ancillary processes of the rights of petition, opinion and legislative communication, had resort to the highest processes of all under our law. These powers and functions of the people constitute "a postulate" (*Smith v. Allright*, 321 U. S. 649, 661) of our form of government, "fundamental" thereto (Report of the

* *Accord:*

"In Europe, the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the government; here * * * our governors are the agents of the people, and * * * stand in the same relation to their sovereign in which regents in Europe stand to their sovereigns."—*Chisholm v. Georgia*, *supra*, 2 U. S. (2 Dallas), 419, 472.

"In the United States * * * the people, not the government, possess the absolute sovereignty. * * * Whenever it may [occur] that proceedings [by the legislative branch] are chargeable [with error or wrong], it is the duty, as well as the right, of intelligent and faithful citizens to discuss and promulgate [the errors] freely—as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the Constitution. * * * [It is by] elections—intended, by the Constitution, to preserve the purity or to purge the faults of the administration—[that] the great remedial rights of the people [are] to be exercised, and the responsibility of their public agents to be screened."—Madison, 4 Elliot's Debates, pp. 569, 574.

United States Commission on Civil Rights, 1959, p. 19), which "the very idea of a government, republican in form, implies" (*U. S. v. Cruikshank*, 92 U. S. (2 Otto) 545, 552). The very "existence" of representational government "depends" (*Ex parte Yarbrough*, 110 U. S. 651, 658) upon the preservation of the people's primacy in the entire electoral process. *United States v. Classic*, 313 U. S. 299, 316.

II

The investigative power of Congress is "not without limit * * *"; as a power of law its exercise is "justifi[able] solely as an adjunct to the legislative process", and "must be related * * * [to] a legitimate task of Congress." "It may never constitute "an end in itself", nor be so employed as to violate "the Bill of Rights." (*Barenblatt v. United States*, 360 U. S. 109, 111, 112; *Watkins v. United States*, 354 U. S. 178, 187, 197).

Where there is involved liberty of speech or one of its cognate liberties, any investigative act by Congress, like any other legislative undertaking, must at least* bear the "burden of persuasion" (*Speiser v. Randall*, 357 U. S. 513, 526, 529; *N. A. A. C. P. v. Alabama*, 357 U. S. 449, 465; *Bates v. Little Rock*, 361 U. S. (Adv. Ops.) 516, 527; *Sweezy v. New Hampshire*, 354 U. S. 234, 266) to show that an overriding and valid state object exists sufficient to overcome the injury to such high-ranking rights. And this may be achieved only "upon showing a subordinating interest which is compelling." (*Bates v. Little Rock*, *supra*, 361 U. S. (Adv. Ops.) at p. 524; *Sweezy v. New Hampshire*, *supra*, p. 265; *Talley v. California*, Mr. Justice Harlan, concurring, 362 U. S. (Adv. Ops.) 60, 66.) It

* It is our position that no justification can be advanced for compromising these fundamental freedoms by a "balancing" test, but even under the balancing theory, protection is required at bar.

cannot be doubted that investigative governmental acts compelling disclosures affecting such liberties inescapably impose a "deterrent effect" and burden upon the exercise of those liberties. (*N. A. A. C. P. v. Alabama*, *supra*, pp. 462-463; *Sweezy v. New Hampshire*, *supra*, p. 250; *Bates v. Little Rock*, *supra*, 361 U. S. (Adv. Ops.) at p. 523.)*

III

Even where not exercised in a manner affecting the direct operation of any governmental processes, liberty of speech and the cognate liberties of association, thought and assembly, are often declared protected by a jealous safeguard surpassing that affecting rights of lesser rank. (*Smith v. California*, 361 U. S. (Adv. Ops.) 147; *Sweezy v. New Hampshire*, *supra*, p. 245; *Speiser v. Randall*, *supra*, 357 U. S. at pp. 521, 526.) It is through manifold exercise and enjoyment of those rights that the people equip themselves to discharge the great processes of government assigned to them under our Constitutional system, the processes of review, control and determination over all of the lesser agencies of government. (*Thornhill v. Alabama*, 310 U. S. 88, 95-103.)

But surpassing in importance to society even the general exercise of those liberties is the transcendent necessity to secure inviolate the freedom of the electoral process and of the processes of petition, communication and review, whereby under the Constitution the stewardship of the elected legislature as agent and representative of the people is maintained, accounted and determined. Those processes *constitute*, they are not merely antecedent or "essential" to, "the workings of democracy." (cf. *Speiser*,

* "The mere summoning of a witness and compelling him to testify against his will, about his beliefs, expressions or associations is a measure of governmental interference."—*Watkins v. United States*, *supra*, p. 197.

v. *Randall*, *supra*, 357 U. S. at p. 521). They are *in se* part of the very process of such government, functional parts of the direct, operational machinery constituting the same. They lie within the operating movement of representative government. Restrain or abridge them and the violence to "government by consent of the governed", is concurrent and instant.

Precisely that is involved at bar.

It is true that it is said in the *Barenblatt* decision that the Committee affected here is possessed of "persuasive authority to investigate Communist activity in this country." (360 U. S. at p. 118.) But it was further said there "This power rests on the right of self-preservation, 'the ultimate value of any society'", and is "justified" upon the "widely accepted view" that the tenets of the Communist Party "include the ultimate overthrow of the Government of the United States by force and violence." (360 U. S. at p. 128.) Whatever its strength or weakness elsewhere, the rule in *Barenblatt* as thus foundationed cannot be invoked at bar.

The base premise in *Barenblatt* will not lie here. The premise of *Barenblatt* directed at advocacy of violence lends no force to the excluding of a person or group from access to the peaceful processes for governmental review and social change. A democratic society relies—by total and fundamental commitment—upon free access to the electoral process for preventing the emergence of forceful, non-democratic change of whatever content. Totally unfettered recourse by all persons to the peaceful channels for electoral change—without discrimination or exclusion of any type—is at once democracy's greatest safeguard, and its most vital characteristic.

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity

essential to the security of the Republic, is a fundamental principle of our constitutional system."—*Stromberg v. California*, 283 U. S. 359, 369.

Whatever its name or program**, if a group or political association be willing to tender its program to the ballot and review processes of democratic law, and peacefully seek to persuade the people to utilize those processes to achieve desired changes through those channels, in no manner can open access so to proceed be denied, withheld or burdened. (*Gillow v. New York*, 268 U. S. 652, 673, Justice Brandeis dissenting)

IV

Contrary thought led the Court of Appeals below to grievous error. That court misread the concept of society's "right of self-preservation" expressed in *Barenblatt* to denote a conceived right in government to invoke its legislative-investigative powers in the circumstance below. In the words of the Court, defendant attempted "to weaken

* Accord:

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."—*DeLoonge v. Oregon*, 209 U. S. 353, 365.

** "[An] organized group, whether you call it political or not, could hardly be barred from the ballot without jeopardizing the constitutional guarantees of all other political groups and parties."—Testimony of the Attorney General of the United States, Hearings, Sub-Committee on Legislation of the Committee on Un-American Activities, 80th Cong., 2d Sess., 20, quoted by Mr. Justice Black, dissenting, *Barenblatt v. United States*, *supra*, 360 U. S. 109, 149.

the Government by impeding and crippling * * * the legislative branch" and "attempt[ed] * * * to develop hostility to the Committee and its investigations." (Pet. App. B, p. 11a) Said the court below: "[These acts] presented a more direct threat to the national security than those [concerning teachers] of which *Barenblatt* was suspected." (Id.)

But this totally misjudges democracy's values. Government within a democracy is not entitled to "protection" against change or criticism expressed within the lawful review processes, however the same be conceived and by whomever instigated or communicated. Such protection does not constitute "national security".* The government has no interest to control or protect itself against the free, uncoerced outcome of any resort to the peaceful review processes of the people; to the contrary, it is upon precisely such free and open determination of policy by the people's will that our nation's "existence depends." (*Ex Parte Yarbrough*, *supra*, 110 U. S. 651, 658.) Any other rule would countenance in the legislature the power to influence its own perpetuation. This is the opening to usurpation.

V

A narrow construction of the Committee's authorizing statute is particularly required here because the damage wrought by the legislative action under the Committee's construction of its legislative mandate* operates directly upon, and undermines, the "corrective processes" of Con-

* The purpose of free speech is to move the people to "unrest" and "opposition", indeed, to "stir [them] to anger" against government; the ultimate purpose of liberty of speech is to peaceably *unseat* governments, and overthrow and replace them, whenever desired by the majority will, nothing less. (See, *Terminiello v. Chicago*, 337 U. S. 1, 4.)

gress, and of the people, relied upon fundamentally in our system for redress of legislative errors. (*Tenney v. Brandhove*, 341 U. S. 367, 377; *Newport Bridge Co. v. United States*, 105 U. S. 470, 482; *Yick Wo v. Hopkins*, 118 U. S. 356, 370.) In *Barenblatt* this Court sustained the assertion of power there involved in part upon the premise that "remedy lies * * * in the people, upon whom, after all under our institutions, reliance must be placed for the correction of abuses committed in the exercise of a lawful power." (360 U. S. at p. 133.) But here the processes of the people for correction are themselves affected directly and undermined. If error is tolerated which invites or permits influence by the Committee as here, as a legislative agency, over its own review, and, ultimately, over its own perpetuation, the processes of correction and review are set at naught. Involved may be not merely an invasion of fundamental rights and liberties of the people, but an effort at perpetuation of the power to invade.*

"Sometimes it is said that man cannot be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have

* In light of the Committee's long record of assailing persons criticising it or its work, or any governmental policies of which it approves, if the power raised at bar to invoke the investigative processes against citizens solely because of appeals for legislative review by the people be sustained, hardly indeed must be the citizen hereafter ready to sign a petition for such review, or ready otherwise to invoke the review processes of the people against any act of the Committee, or against any agency or undertaking of government whatever enjoying the Committee's support.

The New York Times, June 22, 1960, already records the summoning of Nobel prize winner, Dr. Linus Pauling, by the Senate Judiciary Committee, an effort through investigative hearings to probe the names of circulators of petitions to world-noted scientists seeking the banning of tests of nuclear weapons.

we found angels in the forms of kings to govern him! Let history answer this question."—Thomas Jefferson, First Inaugural Address.

CONCLUSION

The conviction below should be reversed.

Respectfully submitted,

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FILED

OCT 24 1960

JAMES H. BROWNING, Clerk

No. 37

In the Supreme Court of the United States

OCTOBER TERM, 1960

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 4a-12a) is reported at 272 F. 2d 783.

JURISDICTION

The judgment of the court of appeals was entered on December 14, 1959. The petition for rehearing was denied on January 14, 1960. A petition for a writ of certiorari was filed on February 12, 1960, and granted on March 28, 1960 (R. 267; 362 U.S. 926). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the House Committee on Un-American Activities, possessing information that petitioner was an important member of the Communist Party and had been sent to Atlanta by the Party for propaganda purposes, was authorized by the House of Representatives to subpoena and question him as to his membership and activities in the Communist Party in the course of a duly authorized investigation into Communist activities in the South.

2. Whether the question asked petitioner as to his membership in the Communist Party was pertinent to the subjects under inquiry and whether petitioner was made aware of the pertinency.

3. Whether the action of the Committee in subpoenaing and questioning petitioner violated his rights under the First Amendment.

STATUTE AND RULES INVOLVED

2. U.S.C. 192 (R.S. 102, as amended) provides:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

The pertinent provisions of Rules X and XI of the House of Representatives, adopted for the Eighty-fifth Congress by H. Res. 5, 85th Cong., 2d Sess., are set forth at R. 75-76, 256-262, and in Appendix A to the Petition for Certiorari, pp. 1a-3a.

STATEMENT

Petitioner was charged in a one-count indictment with having knowingly, wilfully, and unlawfully refused, in violation of 2 U.S.C. 192, to answer a question pertinent to the matter under inquiry, asked him by a subcommittee of the House Committee on Un-American Activities. The question was "Are you now a member of the Communist Party?"¹ (R. 1).

1. The government offered the following evidence at petitioner's trial:

Rule X of the standing Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, provides for a Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress. Rule XI of the standing Rules (60 Stat. 823, 828) provides that this Committee, "or any subcommittee thereof," is authorized to investigate "(i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a

¹The Committee reported the petitioner's contumacy to the House of Representatives (U.S. Ex. 2; R. 235), and the House certified the Committee's report to the United States Attorney for prosecution (H. Res. 685, 85th Cong., 2d Sess.; U.S. Ex. 13; R. 265).

domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." These standing Rules were specially adopted by the House, at the beginning of the Eighty-fifth Congress (during which the offense involved here occurred), as part of the rules of the House for that Congress (H. Res. 5, 85th Cong., 1st Sess.; R. 255-262).

Pursuant to the foregoing authority, the Committee on Un-American Activities passed a resolution providing that public hearings be held in Atlanta, Georgia, to inquire into "[t]he extent, character, and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South," "[e]ntry and dissemination within the United States of foreign Communist Party propaganda," and "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (U.S. Ex. 1, pp. 2605-2606; R. 79-80). The specifically stated purpose of this investigation was to obtain information concerning pending or possible legislation (*id.* at 2605; R. 79). Acting under this resolution, the Chairman of the Committee designated a three-man subcommittee to hold a public hearing in

² U.S. Ex. 1 is the printed transcript of the hearings on July 29, 30, and 31, 1958, before the Committee on Un-American Activities, House of Representatives, 85th Cong., 2d Sess., entitled "Communist Infiltration and Activities in the South," set out in the record at pp. 71-234.

Atlanta, Georgia, on July 29, 30, and 31, 1958 (*id.* at 2606; R. 80). At the trial, the Staff Director of the Committee testified concerning the Committee's reasons for calling this hearing (R. 29):

Mr. Pen[h]a³ testified and gave us information in conferences in addition to his testimony to the general effect that with the movement toward industrialization of the South, the movement of textile industry to the South, development of industrial activities in the South, that the Communist Party and the communist operation was intensifying its efforts in the South by sending into the South colonizers, propagandists, agitators, people who were communist who were carrying on communist activities in the South; that the information which he had on this subject he had derived from personal experience in the course of the then recent past in the Communist operation.

The Staff Director further testified that the hearings were intended to investigate Communist infiltration of basic industries, Communist propaganda activities, foreign Communist propaganda, all in the South, and other matters (R. 18, 38-39)..

³ Armando Penha was a member of the Communist Party from 1950 to 1958 and was a member of the Party's National Textile Commission, which he described as "the leading body, nationally, that is set up for the purposes of controlling, coordinating, and supervising the infiltration and colonization within the textile industry, particularly within the South" (U.S. Ex. 1, p. 2609; R. 83). For a summary of his testimony at the hearings, see *infra*, pp. 8-10.

At the opening of the hearing, on July 29, the Chairman of the Committee summarized the purposes of the hearing (U.S. Ex. 1, pp. 2606-2607; R. 80-81):

* * * [T]he Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government.

The hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation. Today, the Communist Party, though reduced in size as a formal entity, is a greater menace than ever before. It has long since

divested itself of unreliable elements. Those who remain are the hard-core, disciplined agents of the Kremlin on American soil. Most of the Communist Party operation in the United States today consists of underground, behind-the-scenes manipulations. The operation is focused at nerve centers of the Nation and masquerades behind a facade of humanitarianism.

We know that the strategy and tactics of the Communist Party are constantly changing for the purpose of avoiding detection and in an attempt to beguile the American people and the Government respecting the true nature of the conspiracy. As we on the Committee on Un-American Activities seek to develop factual information on these changing strategies and tactics for our legislative purposes, we are constantly met with numerous and unfounded charges respecting the nature of our work and our objectives. Such charges will not dissuade us from our duty. We seek the facts and only the facts. Insofar as it is within the power of this committee, as a part of the United States Congress, we shall obtain the facts and we shall do so within the framework of carefully prescribed procedures of justice and fair play.

I have long felt that the effectiveness of this committee appears to be in direct ratio to the volume of attack against it which is waged by the Communist Party and those under Communist discipline. Accordingly, I was interested to take note some several months ago of the intensified activity against the Committee on Un-American Activities and the Fed-

eral Bureau of Investigation which is now being promoted by the Communist Party. This campaign was the subject of a special booklet which the committee issued entitled "Operation Abolition." * * *

Preliminary investigations by the staff of this committee indicate that the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentration points in the metropolitan areas of the North.

May I emphasize that the purpose of the committee here in Atlanta is to develop facts with reference to a pattern of operation and not to attempt to exhaust the subject matter. We have not subpoenaed witnesses for these hearings merely for the sake of exposure or to put on a show. We are engaged in the serious business of tracing the operations in the United States of a world-wide conspiracy which is determined to destroy us. Should we attempt to interrogate in these hearings even a significant percentage of all possible witnesses on whom we have lead information regarding Communist activity in the South, we would be here for many months to the neglect of our work elsewhere.

Petitioner stipulated at the trial that he had heard the Chairman's opening statement (R. 34, 50-51).

The first witness to appear at the hearing was Armando Penha, who testified that he had been a member of the Communist Party from 1950 until 1958, having joined the Party at the request of the

F.B.I.; that he had attained positions of importance within the Communist Party, including membership on the National Textile Commission of the Party with headquarters in New York City; and that the National Textile Commission was a national body set up by the Communist Party "for the purposes of controlling, coordinating, and supervising the infiltration and colonization of Communists within the textile industry, particularly within the South" (U.S. Ex. 1, p. 2609; R. 83).—Penha described a "colonizer" as (*id.* at 2611; R. 85):

A colonizer is one that is directed by the Communist Party to teach and spread propaganda in order to cultivate the mass workers within a plant or industry or legitimate organization. He must use, in his tactics, methods of spreading confusion, agitation. Such attacks are to be made both legally and illegally. He has to be able to cope with existing situations—one moment being on the offensive and the other on the defensive—participating in open activities of mass agitation and propaganda while, at the same time, being capable of undertaking concealed activities which will obstruct and undermine public confidence in our foreign policy.

However, the clear-cut danger of a colonizer is that he is a part of a vast network of secret party members, of potential saboteurs and espionage agents. The placement of these colonizers in key and basic industries is vital to the party from the standpoint of placing such colonizers in the position of promoting strikes, slowdowns, and so forth. In such concealed

positions a colonizer, in the event of an emergency, becomes very effective to commit sabotage.

Penha stated that the colonizers are Party members from the North who take jobs in textile mills and industries as laborers and that, while colonizers seek placement in very menial employment, "the average colonizer either holds a bachelor's, master's, or doctor's degree" which he conceals from his fellow employees and employer (U.S. Ex. 1, p. 2619; R. 93). He further described the process by which Communist Party members infiltrate both labor union organizations and industry (*id.* at 2620-2621; R. 94-95) and the use of the "front organization" in attaining Party goals (*id.* at 2623; R. 97); testified that it was the aim and purpose of the Communist Party in the South to "agitate and use every means within their command to raise political and economic issues of the Negro people in order to create mass agitation and foment discord at the same time" (*id.* at 2612; R. 86); related that the Party in attempting to bring pressure on the Congress had been very effective in utilizing non-Communist individuals to communicate and petition Congress in opposition to proposed legislation distasteful to the Party (*id.* at 2623-2624; R. 97-98); and said that Party activities in the South are directed from Party headquarters in the North (*id.* at 2627; R. 101).

Following the appearance of Armando Penha, Eugene Feldman, who had been mentioned by Penha as a colonizer in the South for the Communist Party, was called before the Subcommittee (U.S. Ex. 1, p.

2619; R. 93). Most of the questions asked Feldman concerned the Southern Newsletter, which the Committee believed was edited and published by him³⁴ (*id.* at 2630-2635; R. 104-109). Among the questions which he refused to answer were whether he was in fact a Party colonizer in the South and whether he had written a particular edition of the Southern Newsletter attacking the Committee (*id.* at 2632-2633; R. 106-107). Feldman invoked the protection of the First and Fifth Amendments on practically every question (*id.* at 2629-2635; R. 103-109).

Irving Fishman, Deputy Collector of Customs in New York City, testified concerning the large volume of political propaganda imported into the United States from the Soviet bloc countries, some of it directed to persons to disseminate and redistribute in domestic publications, some directed to students, student organizations, editors of college newspapers, and the like (U.S. Ex. 1, p. 2638; R. 112). Perry Cartwright, the business manager of the Southern Newsletter, answered most of the questions asked by the Subcommittee about that publication except as to his associates (*id.* at 2643-2648; R. 117-122). He denied that he was a member of the Communist Party (*id.* at 2645; R. 119).

Clara Hutcherson Saba stated that she had been an organizer for the Food, Tobacco, and Agricultural Workers Union in North Carolina in the early 1940's.

³⁴ The Committee had information that the Southern Newsletter was under Communist direction and was distributed in the South under Communist auspices. See pages 28 and 31 of the Record in No. 54, this Term.

and had subsequently held numerous jobs for short periods of time, mostly in the South (U.S. Ex. 1, pp. 2649, 2652-2653; R. 123, 126-127). She was told that Ralph Long, a former Party member, had stated that he knew her as a Party member, but she refused to answer any questions as to her relationship to the Communist Party (*id.* at 2651-2653, 2658; R. 125-127, 132). Mrs. Saba's husband, Mitchell Saba, then refused to answer whether he was a member of the Communist Party, on the ground of the First Amendment (*id.* at 2661; R. 135). John Hester invoked the Fifth Amendment concerning whether he was a Party member or had engaged in Party activities in Atlanta in 1956 and 1957 (*id.* at 2665; R. 139).

Carl Braden was the first witness on the second day of the hearings, July 30, 1958.* He was told that the Committee had information from reliable witnesses that he was a member of the Communist Party; that he had worked to further Communist activities and propaganda principally in the South; that Harvey O'Connor, whom petitioner said he had been visiting when the Committee's subpoena was served, was a leading member of the Communist Party; and that the Southern Conference Educational Fund, of which petitioner testified he was a field organizer, was a Communist front (U.S. Ex. 1, pp. 2668-2671, 2675, 2680-2681; R. 142-145, 149, 154-155). The Staff Director of the Committee explained that he was being questioned so that it could evaluate present and contemplated legis-

* Braden was likewise convicted of contempt and is the petitioner in No. 54, this Term. The facts as to his contempt will be more fully described in our brief in that case.

lation dealing with Communist activities (*id.* at 2669; R. 143). The witness, however, invoked the First Amendment as to any questions connecting him with alleged Communist activity (*id.* at 2668-2671, 2674-2679; R. 142-145, 148-153).

Petitioner also appeared before the subcommittee on July 30, 1958. The Staff Director of the Committee testified at the trial that, at that time, the Committee had the following information (R. 29-30);

* * * In essence the information of which the committee was possessed was that Mr. Wilkinson was a member of the communist party, that he had been identified by a creditable witness under oath before the committee a short time or within a year or so prior to the Atlanta hearings, identified as a Communist. It was also the information of the committee that Mr. Wilkinson had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South of a group known as the Emergency Civil Liberties Committee which itself had been cited by the Internal Security Subcommittee as a communist operation or a communist front. It was the information of the committee that Mr. Wilkinson's assignments, including setting up rallies and meetings over the country for the purpose of engendering sentiment against the Federal Bureau of Investigation, against the security program of the government, and against the Committee on Un-American Activities and its activities. Mr. Wilkinson had in the course of the relatively recent past prior to his appearance in Atlanta been sent into Atlanta by the communist operation for the purpose of con-

ducting communist activities in the South and more specifically in the Atlanta area. What I'm telling you now is only a general summary, you understand.

The Staff Director then described the Committee's basis for subpoenaing petitioner (R. 30):

[Assistant United States Attorney Sparks]

* * * Now, did the committee originally plan to call [petitioner] as a witness at the Atlanta hearings or did information come to the committee which caused them to subpoena him only a week before the hearing?

[Staff Director Arens] The latter is true, but may I explain just a little bit, if you please, sir. The committee knew that Mr. Wilkinson was actively engaged for some considerable period of time in communist work in the Emergency Civil Liberties Committee and in the various operations which I have described. The Committee did not know specifically that Mr. Wilkinson was coming into the South, particularly in this area, in connection with his Emergency Civil Liberties Committee work. We had his agenda of other meetings which we had procured by our investigative processes, other meetings and other activities in which he was engaged over the country. It was only in the course, if my memory serves me correctly and I will have to be a little bit general on this, it was only in the course of a matter of a few weeks at the most, I believe, perhaps less than that, that the committee became aware of Mr. Wilkinson's presence in Atlanta and feel that it was desirable for him to be subpoenaed for the hearings which had been set for Atlanta prior

to the time we gained knowledge of his visit here.⁵

After petitioner was sworn at the hearing, he stated his name, but refused to answer a question as to his residence.⁶ Instead, he said, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee" (U.S. Ex. 1, p. 2681; R. 155). He then gave the same answer to a question concerning his occupation. And, when he was asked the question which was the subject of his indictment and conviction, "Mr. Wilkinson, are you now a member of the Communist Party?," he again gave the same answer (*ibid.*).

The Staff Director of the Committee told the witness the authority of the Committee and the purposes of the current investigation (U.S. Ex. 1, p. 2682; R. 156):

The Committee on Un-American Activities has two major responsibilities which it is undertaking to perform here in Atlanta.

Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal se-

⁵ At petitioner's trial, the Chief Deputy United States Marshal in Atlanta testified that the subpoena served on petitioner was received from the Marshal's office from Washington, D.C., on the morning of July 23, 1958 (six days before the hearings opened) and was served by him on petitioner the afternoon of the same day within an hour of petitioner's arrival at the Atlanta Biltmore Hotel (R. 40-41). Apparently, the Committee had learned that petitioner was coming to Atlanta, rather than of his actual presence there (see Pet. Br. 21, note 6).

⁶ Although petitioner did not have counsel present, he stated that he knew that he had this privilege (U.S. Ex. 1, p. 2681; R. 155).

curity laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Communist Party and the Communist conspiratorial operations in the United States. H.R. 9937¹ is one of those. Other proposals are pending before the committee not in legislative form yet, but in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the

¹ H.R. 9937, 85th Cong., 2d Sess., entitled "A Bill to Amend the Internal Security Act of 1950, and for other purposes," encompassed a number of separate matters relating to the internal security field. For example, the bill would have amended the Smith Act by adding a definition of the term "organize," amended Title 18, Chapter 37, of the United States Code relating to espionage, extended the period of the statute of limitations in certain types of security cases, and amended 22 U.S.C. 611(b) (the Foreign Agents Registration Act).

United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

The Staff Director then described the information which the Committee possessed that petitioner was "a hard-core member of the Communist Party," had been "designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee," and had been sent to the Atlanta area by the Party "for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta"* (*ibid.*). He further said that, if petitioner answered the question concerning his Party membership, the Subcommittee would then inquire concerning petitioner's activities "as a Communist on behalf of the Communist Party," his activities "from the standpoint of propaganda," and his activities attempting to destroy the F.B.I. and the Committee (*id.* at 2683; R. 157). The purpose of these additional questions

* The latter part of this statement is apparently somewhat inaccurate since the subpoena seems to have been issued when the Committee learned petitioner was coming to Atlanta and served immediately after he arrived (see *supra*, p. 14; note 5).

would have been "to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States" (*ibid.*).

The Staff Director then repeated the question: "Are you now a member of the Communist Party?" (U.S. Ex. 1, p. 2683; R. 157). Petitioner answered: "I am refusing to answer any questions of this committee" (*ibid.*). After the Staff Director requested the Chairman of the Subcommittee to order petitioner to answer the question, the Chairman of the Subcommittee again explained the purpose of the hearing (*id.* at 2683; R. 157):

There is a bill pending right now before the Congress. We have held hearings on it just a couple of weeks ago on the question of the organizational features of the Communist conspiracy. Specifically the Supreme Court, in what is popularly referred to as the Yates Case, held that the Communist Party must be regarded as having been organized in 1945 and that automatically thereby all prosecutions for organizational features have been destroyed and no more prosecution is possible.

We take the position that what happened in 1945 was a reconstruction of the party, rather than an organization of it; that it had been organized years before. And we received evidence yesterday along the lines of the present techniques in connection with new organizational efforts; and among other reasons for pertinency of these hearings, would be the development of information which we feel you have, sir, that you could shed light on the cur-

rent methods of organizing or regrouping or reconstructing of the party and subdivisions thereof.

The Chairman of the Subcommittee warned petitioner that "we disagree with your position as a basis for possible contempt proceedings" (*ibid.*), but advised him that he had the right to invoke the Fifth Amendment if he feared that his answers might incriminate him (*id.* at 2683-2684; R. 157-158). The Chairman then ordered petitioner to answer the question concerning petitioner's Party membership (*id.* at 2684; R. 158). Petitioner again refused to answer (*ibid.*):

Mr. WILKINSON. I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the

press, wherein it cannot legislate and therefore it cannot investigate.

I am, therefore, refusing to answer any questions of this committee.

The Staff Director of the Committee read to petitioner the testimony of Anita Schneider, taken at a previous hearing in Los Angeles, that the Citizens Committee to Preserve American Freedom was Communist controlled, that her contact in the organization was petitioner, that she knew petitioner to be a Communist, and that he asked her to start a similar organization in San Diego (U.S. Ex. 1, p. 2684; R. 158). The Staff Director then asked petitioner whether Mrs. Schneider was correct in testifying that he was a Communist (*ibid.*). Petitioner simply answered that "I am refusing to answer questions" (*id.* at 2685; R. 159). Petitioner refused to answer whether he knew Mrs. Schneider "on the grounds which I have stated previously," and also refused to say where he was when subpoenaed by the Committee to appear, without giving a reason^o (*ibid.*).

Petitioner was asked to identify a reproduction of a handwritten registration card at the Atlanta Biltmore Hotel of himself and a Dr. James A. Dombrowski, showing his registration on July 23, 1958, giving his address as New York, his business firm as the Emergency Civil Liberties Committee, and his intention to check out in a week (U.S. Ex. 1, p. 2685; R. 159). Petitioner answered that "I am refusing to answer any questions of this committee" and "I refuse to answer any questions of this committee on the grounds of my initial answer. The House Committee on Un-American Activities stands in direct violation

of the first amendment to the United States Constitution" (*ibid.*). He also refused to answer whether he had made the long distance telephone calls from the Atlanta Biltmore Hotel on July 23, 1958, as shown by a document received by the Subcommittee from the hotel (*id.* at 2686; R. 160). Petitioner again gave as his reasons "the grounds of my initial answer. The mandate of the House Committee on Un-American Activities stands in direct violation of the first amendment to the United States Constitution" (*ibid.*). A member of the Subcommittee asked, to be "absolutely clear," whether petitioner was relying on the First Amendment (*ibid.*). Petitioner thrice stated that his initial answer was his complete answer (*id.* at 2686-2687; R. 160-161). Petitioner refused to answer whether "you are part of an enterprise to destroy the very Constitution of the United States under which we all have protection; that you are the agent of the Communist Party as an arm of the international Communist conspiracy sent into Atlanta for the purpose of engaging in conspiratorial activities on behalf of the Communist Party" (*id.* at 2687; R. 161). The Chairman of the Subcommittee then told petitioner (*ibid.*):

You have not made it abundantly clear whether you are invoking the protection of the first amendment upon a feeling on your part that you want to personally rely, and it is a personal matter to you, on that amendment as a basis for refusal or whether your reference to the amendment is, let us say, philosophical conversation or some other ideas you might have in mind.

Will you not please try to clarify that point for us?

Mr. WILKINSON. My answer is my answer.]

Following petitioner's testimony, Mrs. Madge Spurny Cole, who had been identified by Armando Penha as a "colonizer" for the Communist Party (U.S. Ex. 1, p. 2616; R. 90), was summoned to testify. Mrs. Cole said that, although she possessed both bachelor's and master's degrees, she had been employed as a waitress and as a "spare hand" and other such positions in the textile industry in the South (*id.* at 2688-2690; R. 162-164). Mrs. Cole invoked the Fifth Amendment when asked if she knew Armando Penha and whether she was a Communist (*id.* at 2692-2693; R. 166-167). At this point, Penha was asked to testify and again identified Mrs. Cole as a "colonizer" for the Communist Party (*id.* at 2693-2694; R. 167-168). Mrs. Cole then invoked the Fifth Amendment as to whether Penha was telling the truth (*id.* at 2694; R. 168).

William Robertson testified that he had been an organizer for the Food, Tobacco, and Agricultural Workers in North Carolina in 1949 and that from 1949 to 1955 he had been employed as a laborer for short periods of time in various southern textile and other factories (U.S. Ex. 1, pp. 2697-2698; R. 171-172). He admitted that he had not told the truth about his undergraduate and graduate degrees in an application for work in a textile mill (*id.* at 2696, 2699; R. 170, 173). When he refused to answer whether he knew Mrs. Cole, the Staff Director of the Committee stated that "[t]his committee is un-

dertaking to develop factual information respecting the administration and operation of certain anti-Communist legislation which is on the books and to assemble information which will enable it to appraise legislative proposals pending before it" (*id.* at 2700; R. 174). More specifically, he explained that the "committee is here in Atlanta for the purpose of developing factual information respecting Communist techniques, principally Communist techniques and colonization in the South" (*ibid.*). The witness refused to answer various questions, including whether he was a member of the Communist Party, under the First and Fifth Amendments (*id.* at 2701; R. 175). Among these questions was the inquiry whether Penha was correct in naming Robertson as an active Party colonizer in the South (*id.* at 2615, 2701; R. 89, 175).

Karl Korstad testified that, although he had undergraduate and masters degrees, he had worked as a union organizer for the Food, Tobacco, and Agricultural Workers Union in the South from 1945 or 1946 to 1951 (U.S. Ex. 1, pp. 2704-2705; R. 178-179). He refused to answer, invoking the First and Fifth Amendments, whether he was a member of the Communist Party and whether Penha was correct in identifying him as a Party colonizer (*id.* at 2705-2708, 2619; R. 179-182, 93).

Jerome Van Camp testified that, after he completed two years of college work, he had held numerous laboring jobs for short periods of time, most of them in the South (U.S. Ex. 1, pp. 2709-2711; R. 183-185). He refused to answer whether he was a present or past

member of the Communist Party or whether Penha was correct in describing him as a Party colonizer (*id.* at 2711-2712, 2615; R. 185-186, 89). Hunter O'Dell likewise refused to answer whether he was a Party member, whether he wrote an article which appeared under his name in the Communist periodical *Political Affairs*, and several similar questions (*id.* at 2716-2718; R. 190-192). During his testimony, the Staff Director of the Committee stated that the Committee was "seeking to develop factual information which it can use in devising legislative enactments to protect this Nation against this conspiratorial fifth column," that two witnesses had identified the witness as a Party member, and that a detailed program for Communist infiltration of the South had been found by the New Orleans police on his premises" (*id.* at 2714-2716, 2719; R. 188-190, 193). William Matthews, who was identified by Penha as a Party colonizer sent to the South from New York (*id.* at 2616, 2618; R. 90, 92), denied that he had ever been a Party member or knew Penha (*id.* at 2722-2725; R. 196-199). He refused to answer several other questions relating to his past employment, particularly in the textile industry, on the basis of the Fifth Amendment (*id.* at 2722-2724; R. 196-198).

On the third day of the hearings in Atlanta, the Subcommittee heard testimony from an unnamed

* This program was described as including "organizational plans and specifications, mass agitation, permeation of the press, Party building, cadres, literature, finances, educational activities, outlined plans for industrial concentration, and the like" (U.S. Ex. 1, p. 2716; R. 190).

Hungarian concerning his experiences in Hungary and the Soviet Union and as to the nature of the world Communist movement (U.S. Ex. 1, pp. 2728-2753; R. 202-227). The Chairman of the Subcommittee then made a statement closing the hearings (*id.* at 2753-2754; R. 227-228):

In the first place, we have seen here a pattern of Communist activities and techniques which verifies and confirms similar patterns which we have been observing elsewhere in the Nation.

There has been developed here new and convincing evidence regarding the problem of Communist propaganda, both foreign and domestic. There has been revealed factual information respecting strategy and tactics of Communists in maneuvering into groups and organizations which they seek to influence in the Communist objectives.

Finally, there has been developed information which should stand as a warning to the South, namely, that as the textile and other industries are developed in the South, there is the ever-present threat of Communist penetration.

*** We believe that the evidence which is in our records now *** does add materially to the fund of information already available as a foundation for legislative action.

We on the committee will return to Washington with the information which has been developed here and use it as part of the fund of knowledge which we are gaining to assist us in the discharge of our duties, which, under a

mandate of the Congress are, in essence, to maintain a continuing surveillance over the operation of our various security laws and to recommend, when necessary, amendments to these laws or the enactment of new ones.

2. At the close of the government's case—the defense offered no evidence—the district court ruled as a matter of law that the Subcommittee had the right to ask the question concerning petitioner's membership in the Communist Party, that the question was pertinent to the subject under inquiry by the Subcommittee, and that therefore petitioner had a duty to answer it (R. 57). The court submitted to the jury the issue whether the pertinency of the question and its relation to the subject under inquiry were sufficiently explained to the petitioner by the Subcommittee (R. 59-60). The jury found petitioner guilty and he was sentenced to imprisonment for twelve months. On appeal to the Court of Appeals for the Fifth Circuit, the conviction was affirmed (R. 63-70) on the ground that "the Barenblatt case is controlling here" (R. 69).

SUMMARY OF ARGUMENT

I

A. The record demonstrates that petitioner was not subpoenaed to appear before the Subcommittee in order for it to investigate mere criticism of the House Committee on Un-American Activities. On the contrary, examination of the Committee's resolution authorizing the hearings, the testimony of the Staff Director of the Committee at petitioner's trial, the opening statement of the Chairman of the Committee,

the testimony and questioning of other witnesses at the hearings, the Subcommittee's explanation of the question asked petitioner which he refused to answer, and the closing statement of the Subcommittee Chairman show that the Committee had three subjects under investigation for which it subpoenaed and questioned petitioner. The first and apparently most important one was Communist infiltration and colonization activities in the South; the second was the Party's organization; and the third was the Party's propaganda activities, especially in the South, including, but not confined to, its efforts to hinder and abolish the F.B.I. and the Committee.

Petitioner's contention that the Subcommittee was investigating no more than criticism of the Committee rests almost entirely on a single statement of the Staff Director made when petitioner refused to answer. But when this statement is considered in context, it clearly refers only to the *occasion* for calling petitioner as a witness (i.e., that petitioner happened to be in Atlanta), not to the purpose for which he was called or to the subject under inquiry. This construction is supported by the Staff Director's testimony at petitioner's trial explaining why the Committee decided to subpoena petitioner, as well as by the other strong evidence of the Committee's purposes described above. Thus, if the Subcommittee were investigating petitioner's criticism of the Committee at all, it was a portion of its investigation of Communist propaganda activity. And even if it were considered as a separate subject of investigation, it was only one of four such subjects.

B. The three subjects of the Subcommittee's investigation were clearly within House Rule XI, which is the authorizing resolution of the Committee. This Court in *Barenblatt v. United States*, 360 U.S. 109, 118, held, on the basis of Rule XI and its gloss of legislative history, that "the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country." Moreover, Rule XI authorizes the Committee to investigate "the extent, character, and objects of Un-American propaganda activities in the United States," and there seems no reason to exclude from this authorization the Party's propaganda activities directed against the F.B.I. and the Committee.

Rule XI gives the Committee's subcommittees the same authority as that granted the Committee itself. In addition, the Committee passed a resolution authorizing this Subcommittee to hold hearings on the subject of Communist colonization and infiltration in basic industries in the South, Communist propaganda activities in the South, and any other subject which the Subcommittee might designate which is within the Committee's authority.

Even if petitioner's criticism of the Committee were considered as an independent subject of investigation, this subject was also authorized, since the Committee and Subcommittee had authority to investigate all Communist activity and they had been informed that petitioner was a leading Party member. But even if this subject were not authorized, petitioner was subpoenaed in relation to three other authorized subjects

of investigation and the question he refused to answer was pertinent to these subjects as well.

II

A. A series of decisions by this Court has established that a witness charged with contempt cannot raise at his trial issues which he did not raise before the tribunal before which the contempt occurred—at least when the tribunal might have been able to remedy the witness' objection. A congressional committee can remedy a pertinency objection by fully explaining the pertinency of the question to the subject under inquiry or even by changing the subject under inquiry, if necessary. Moreover, *Watkins v. United States*, 354 U.S. 178, and *Barenblatt, supra*, establish that a witness cannot raise the issue of pertinency for the first time at his trial. Here, petitioner based his refusal to answer entirely on First Amendment grounds and there was not even a suggestion of an objection to pertinency.

B. In any event, the pertinency of the question asked petitioner was clear and this pertinency was made to appear with indisputable clarity to petitioner. As has been stated, the three purposes of the Subcommittee, i.e., the subject under inquiry when petitioner was questioned, were Communist infiltration and propaganda activities in the South, and the Party's organization. The question whether petitioner was a member of the Communist Party was an introductory, qualifying question which was obviously pertinent to all three subjects which the Subcommittee intended to pursue.

As to whether petitioner was adequately apprised of the pertinency of the question at the Subcommittee's hearings, the jury found that he was so apprised. This finding is fully supported by the evidence. The three subjects under inquiry were described to petitioner by the means prescribed in *Watkins* (354 U.S. at 211-214: the resolution authorizing the Subcommittee hearings (petitioner was present when it was introduced into the record), the opening statement of the Chairman (petitioner was then present), the questioning and testimony of other witnesses, and the response of the Subcommittee when petitioner refused to answer the question. The pertinency of the question as to petitioner's Party membership to these subjects was explained to petitioner by the Subcommittee through informing him as to what its general line of inquiry would be. Moreover, *Barenblatt* determined that the pertinency to an investigation of Party activities of a witness' Party membership is, without explanation; "clear beyond doubt" (360 U.S. at 125).

III

The Subcommittee's investigation did not violate the First Amendment.

A. The Subcommittee was acting pursuant to a valid legislative purpose. The Court has held that the Communist Party is not an ordinary political party and that therefore Congress has broad power to legislate as to its activities (*Barenblatt*, 360 U.S. at 128). Moreover, Congress' power to investigate extends, at least to some extent, beyond its power to legislate since "of necessity the investigatory process must pro-

ceed step by step" (*id.* at 130). Thus, the Subcommittee's power to investigate Communist infiltration, particularly in basic industries, and of the Party's organization, is clear.

The power of the Subcommittee to investigate Communist propaganda activities is also established by *Barenblatt*. There, the Court held that the Committee could investigate Communist activities in the field of education, even though this field is protected by the First Amendment. Equally, the Subcommittee here had the constitutional power to investigate Communist activity in the field of propaganda even though this area is likewise protected by the First Amendment.

Petitioner's contention that he was subpoenaed because of his criticism of the Committee and therefore merely for purposes of harassment or exposure is without merit. First, as we have said, petitioner was not subpoenaed by the Committee because of his criticism of it. Second, even if it were, this criticism was part of the Party's propaganda activities and is therefore a proper subject of investigation. Third, it was at most only one of several reasons for subpoenaing petitioner, and the others were entirely valid. Fourth, the Court has upheld disclosure statutes relating to the integrity of basic governmental functions such as elections and lobbying. *A fortiori*, the investigative power of Congress, which is broader than its legislative power, includes attempts to ascertain the source of criticism of congressional committees, at least when the Communist Party is involved. Since the Party's ultimate objective is overthrow of the legislative process and, indeed, the entire Government.

of the United States—to which its intermediate objectives (such as abolition of the Committee) are dedicated—the Committee can investigate its efforts in this field just as it can investigate its activities in education and propaganda. Lastly, *Watkins* and *Barenblatt* establish that the courts will not, and cannot, examine the motives of Congress in conducting an investigation.

B. The balance of individual and governmental interests supports the Subcommittee's inquiry. The governmental interests here at stake are at least as strong as in *Barenblatt*. The Subcommittee was investigating Communist infiltration, particularly in basic industries, the organization of the Party, and Communist propaganda activity. Because of the clear connection between the Communist Party and violent overthrow of government, this Court has repeatedly recognized the strong governmental interest in this area. Moreover, here, unlike in *Barenblatt*, the investigation was not into what is perhaps the peculiarly sensitive area of education, and the only question asked by the Subcommittee involved present (not past) Communist membership.

ARGUMENT

In *Barenblatt v. United States*, 360 U.S. 109, the Court held that Congress had authorized the House Un-American Activities Committee to compel testimony from a witness employed in the field of education about his membership in the Communist Party (*id.* at 116-123); that a witness must raise the issue

of pertinency and that, in any event, the record showed that the witness knew of the pertinency of the questions asked (*id.* at 123-125); that the First Amendment does not prevent a congressional committee from investigating Communist activity in the field of education (*id.* at 125-132); and that, if Congress acted pursuant to its constitutional power, the courts cannot interfere with the investigation on the basis of the motives underlying it (*id.* at 132-134). Petitioner raises these same issues again, but attempts to distinguish *Barenblatt* principally on the ground that the Subcommittee here was investigating only "public criticism of the Committee"¹⁰ (Pet. Br. 17). As we will show, however, the Subcommittee was not investigating mere "public criticism" of itself, but rather all the Party's propaganda activities in the South. Indeed, it was investigating not only Communist propaganda activities but Communist infiltration in basic industries in the South and the Party's organization. These subjects of investigation are not substantially different, either constitutionally or otherwise, from Communist activities in education which was being investigated in *Barenblatt*. We therefore submit that, as the court of appeals held, this Court's decision in *Barenblatt* fully answers petitioner's contentions, and is controlling.

¹⁰ The position of the *amicus*, the National Lawyers Guild, is also based on this erroneous premise.

I. THE COMMITTEE AND SUBCOMMITTEE WERE AUTHORIZED BY CONGRESS TO SUBPOENA PETITIONER

A. THE SUBJECTS UNDER INQUIRY FOR WHICH PETITIONER WAS SUBPOENAED WERE COMMUNIST INFILTRATION AND PROPAGANDA ACTIVITY IN THE SOUTH AND THE ORGANIZATION OF THE COMMUNIST PARTY

The record demonstrates that petitioner was not subpoenaed to appear before the Subcommittee in order for it to investigate mere criticism of the House Committee on Un-American activities. The resolution of the Committee authorizing the hearings stated that their purpose was to inquire into "[t]he extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South," "[e]ntry and dissemination within the United States of foreign Communist Party propaganda," and "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (U.S. Ex. 1, pp. 2605-2606; R. 79-80). The Staff Director of the Committee testified at petitioner's trial that the hearings were intended to investigate Communist infiltration of basic industries, Communist propaganda activities, and foreign Communist propaganda, all in the South (R. 18, 38-39). Consistently with the authorizing resolution, the Chairman of the Committee stated, at the beginning of the hearings, that "[t]he hearings in Atlanta are in furtherance of a project of this committee on current techniques of the Communist conspiracy in this Nation," that such continuous investigation is necessary in order to evaluate existing and contemplated legislation in this field, and that these hearings were specifi-

cally designed to investigate information that "the principal Communist Party activities in the South are directed and manipulated by agents who are headquartered in Communist nests in concentrated points in the metropolitan areas of the North" (see the Statement, *supra*, pp. 6, 8). While the Chairman mentioned efforts of the Communist Party to abolish the Committee (see *supra*, pp. 7-8), he did not indicate that such activity existed particularly in the South or that these hearings were to investigate this issue.

The two principal voluntary witnesses who appeared at the hearings both testified before petitioner. Armando Penha described the activities of the Communist Party in infiltrating the textile industry in the South, Party propaganda activities in the South, and the leadership of Party programs in the South from headquarters in the North (see *supra*, pp. 8-10). Irving Fishman testified concerning the large-scale importation of foreign Communist propaganda into the United States (see *supra*, p. 11). The twelve involuntary witnesses, who testified before and after petitioner, were questioned concerning information possessed by the Committee about their membership and activities in the Communist Party. Furthermore, when inquiry was not cut off at the outset by the witness' refusal to answer, the Subcommittee tried to obtain information concerning his Party activities in colonization, infiltration, and propaganda in the South (see *supra*, pp. 10-12, 21-24).

The Staff Director of the Committee testified at the trial that petitioner was subpoenaed to appear before the Subcommittee because of information that he had

been a member of the Communist Party for a long period, that he had been recently sent by the Party to Atlanta "for the purpose of conducting communist activities in the South and more specifically in the Atlanta area," that he had been "actively engaged" in Communist work in the Emergency Civil Liberties Committee which was thought to be a "communist operation," and that he "had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South" by that Committee (see *supra*, pp. 13-14).

When petitioner appeared before the Subcommittee and refused to answer whether he was a member of the Communist Party, the Staff Director of the Committee stated that the Committee had the responsibility of investigating Communist operations and activities in the United States in order to ascertain the value of various legislative proposals before the Committee (see *supra*, pp. 15-16). The Staff Director continued that, if petitioner answered the question of membership, he would then be questioned, in order "to develop legislation to protect the United States," concerning his activities "as a Communist on behalf of the Communist Party," his propaganda activities, and his activities "to destroy the Federal Bureau of Investigation and the Committee * * *" (see *supra*, p. 17). After petitioner again refused to answer the question about his Party membership, the Chairman of the Subcommittee explained that one of the reasons for subpoenaing petitioner was that the Committee believed that he "could shed light on the current methods of organizing or regrouping or reconstructing of

the party and subdivisions thereof" in connection with pending legislation (see *supra*, p. 18).

In his statement at the close of the hearing, the Subcommittee Chairman said that the Subcommittee had obtained information concerning Communist propaganda, both foreign and domestic, and Communist activities, especially in relation to infiltration of the textile and other industries in the South (see *supra*, pp. 24-25).

We submit that this record demonstrates that the Subcommittee subpoenaed petitioner in order to investigate three subjects.¹¹ The first and apparently most important was to investigate Communist infiltration and colonization activities in the South—both overt and through the Emergency Civil Liberties Committee, which was thought to be a means for directing Communist activities in the South by Communist agents in northern cities; the second subject was the Party's organization and reconstitution; and the third was the Party's propaganda activities, especially in the South, including but not confined to efforts to hinder and abolish the F.B.I. and the Committee.

Petitioner relies (Pet. Br. 7-8, 13, 21), in claiming that the Subcommittee was investigating only criticism of the Committee, on a statement of the Staff Director of the Committee when petitioner refused to testify

¹¹ There is no indication that petitioner was subpoenaed to testify concerning foreign Communist propaganda in the South, which was another subject of the hearings as a whole (see *supra*, pp. 33, 34). In any event, that subject was authorized by specific provisions in Rule XI and the resolution authorizing the Subcommittee's investigation (see *supra*, pp. 3-4).

concerning his Party membership.¹² The Staff Director said that petitioner was "not even subpoenaed for these particular hearings until we learned that you were in town" "for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings" (see the Statement, *supra*, p. 17). But in this same statement the Staff Director said that the Committee was investigating Communist operations and activities in connection with various legislative proposals and that, for this purpose, petitioner would be questioned generally concerning his Party activities as well as his propaganda activities (see *supra*, pp. 15-16, 17). Thus, when the statement relied upon by petitioner is considered in context, it clearly refers only to the *occasion* for calling petitioner as a witness—that he happened to be in Atlanta at the time—not to the purpose for which he was called or to the subject under inquiry. Moreover, this construction is supported by the Staff Director's testimony at petitioner's trial explaining why the

¹² The only other basis cited for petitioner's claim (Pet. Br. 14) is a statement in the Committee's "Synopsis" of the hearings (U.S. Ex. 1, p. 2604; R. 78): "Frank Wilkinson was also called as a witness when he appeared in Atlanta as a representative of the Emergency Civil Liberties Committee. This is an organization with headquarters in New York, which has as its avowed purpose the abolition of the House Committee on Un-American Activities and the curbing of F.B.I. activities. Mr. Wilkinson refused to answer when asked if he was sent to Atlanta to disrupt the Committee hearings. In reply to all questions asked him, he replied, 'I am answering no questions of this committee.'" The description of the question asked petitioner is inaccurate and, in any event, the statement does not even purport to state the Committee's purpose in subpoenaing petitioner.

Subcommittee decided to subpoena petitioner only a week before the hearings. He stated that the Committee had known that petitioner had been "actively engaged for ~~some~~ considerable period of time in communist work in the Emergency Civil Liberties Committee" and particularly in leading these activities in the South, but did not know until shortly before the hearings that he would be in Atlanta at the time when they were to be held (see *supra*, pp. 13-14). When all of the statements of the Staff Director are considered, together with the resolution authorizing the Subcommittee's investigation, the statement of the Chairman of the Committee opening the hearings, the testimony and questions asked other witnesses, the explanation of the Subcommittee's Chairman after petitioner refused to answer, and the statement of the Subcommittee's Chairman closing the hearings, it is clear that the Committee was investigating all three subjects mentioned above when it subpoenaed and questioned petitioner. Thus, if the Subcommittee were investigating petitioner's criticism of the Committee at all, it was as a portion of its investigation of Communist propaganda activity. And even if it were considered as a separate subject of the investigation, it was only one of four such subjects.

B. THE SUBJECTS UNDER INQUIRY WHEN PETITIONER WAS SUBPOENAED WERE WITHIN THE AUTHORITY OF THE COMMITTEE AND SUBCOMMITTEE

All three of the above-stated subjects of the Subcommittee's investigation were clearly within House Rule XI (H. Res. 5, 85th Cong., 1st Sess.) which is the authorizing resolution of the Committee. In

Barenblatt, the Court held, on the basis of an extensive review of the language of Rule XI (360 U.S. at 116-123) and its gloss of legislative history, that "the House has clothed the Un-American Activities Committee with pervasive authority to investigate Communist activities in this country" (*id.* at 118). And the Court refused "to exclude the field of education from the Committee's compulsory authority" (*id.* at 121) even though investigation of this field raised constitutional questions. Certainly, Communist infiltration and propaganda activity in the South, and the organization of the Communist Party, come within the Court's description of the Committee's authority.

Insofar as the Subcommittee was investigating Communist efforts to abolish or hinder the F.B.I. and the Committee—including what petitioner labels "criticism" of these two groups—the Subcommittee was merely investigating a subcategory of the Party's propaganda activities. There is no apparent reason, nor does petitioner suggest any, why the Party's efforts to abolish or hinder the F.B.I. and the Committee are different from other propaganda activities of the Communist Party. And such activities not only come within the statement of the Committee's authority in the *Barenblatt* case, but are directly within clause 1 of Rule XI, which authorizes the Committee to investigate "the extent, character, and objects of Un-American propaganda activities in the United States * * *" (see the Statement, *supra*, p. 3).

Rule XI gives any of the Committee's subcommittees the same authority as that granted the Committee itself. Moreover, all three subjects of the Subcom-

mittee's investigation were authorized by the resolution of the Committee concerning these hearings. Clause 1 of that resolution specifically provides for an investigation of "[t]he extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South * * *" (U.S. Ex. 1, p. 2605; R. 79). The second subject of the Subcommittee's investigation, the organization and reconstruction of the Communist Party, comes within clause 3 of the resolution authorizing the Subcommittee's investigation, which provides authority to investigate "[a]ny other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate" (*id.* at 2606; R. 80). As we have shown, the organization of the Party is within the authority of the Committee. The third subject of the investigation, that relating to the Party's propaganda activities in the South, is within clause 1 of the Subcommittee's authorizing resolution. That clause provides for an investigation of "Communist Party propaganda activities in the South * * *," which would include the Party's attempts to bring pressure to stop the Atlanta hearings (*id.* at 2605; R. 79).

Even if petitioner's criticism of the Committee were considered as an independent subject of investigation, this subject was also authorized since the Committee and, by clause 3 of the resolution, the Subcommittee were authorized to investigate all Communist activity and they had been informed that petitioner was an active and leading Party member. But even if this subject were not authorized, petitioner was subpoenaed in relation to three other subjects which were author-

ized and the question he refused to answer was pertinent to these subjects as well (see *infra*, pp. 46-49). Since petitioner's conviction was based on refusal to answer a question relating to authorized subjects of inquiry, it was clearly valid.

II. PETITIONER, HAVING FAILED TO CHALLENGE THE PERTINENCY OF THE QUESTION, CANNOT RAISE THE ISSUE FOR THE FIRST TIME AT HIS TRIAL. IN ANY EVENT, THE QUESTION WAS PERTINENT TO THE SUBJECTS UNDER INQUIRY AND THIS PERTINENCY WAS MADE CLEAR TO PETITIONER

A. THE ISSUE OF PERTINENCY WAS NOT PROPERLY RAISED BEFORE THE SUBCOMMITTEE

Petitioner argues (Pet. Br. 11-13) that the question which he refused to answer was not pertinent to the subject under inquiry and that this pertinency was not made undisputably clear to him. But petitioner failed to raise this objection before the Subcommittee and, under this Court's decisions, is precluded from raising it for the first time in the contempt proceeding.

In *Hale v. Henkel*, 201 U.S. 43, the witness based his refusal to produce documents on three grounds, one of which being that it was "impossible for him to collect them within the time allowed" (*id.* at 70). The Court indicated that it would not consider this objection because, "[h]ad the witness relied solely upon [this] ground, doubtless the court would have given him the necessary time" (*ibid.*). *United States v. Bryan*, 339 U.S. 323, 334, in commenting on the *Hale* case, stated:

[H]aving refused compliance for other reasons which the lower court could not remedy, the

witness could not later complain of its refusal to do a meaningless act—to grant him additional time to gather papers which he had indicated he would not produce in any event.

Similarly, *Bryan* held that a witness who, having been subpoenaed to appear and produce records before a congressional committee, appears but refuses to produce the records, may not raise at his trial for the first time the issue whether a quorum of the committee was present. The Court stated that “[t]he defect in composition of the Committee, if any, was one which could easily have been remedied. * * * For two years, now grown to four, the Committee’s investigation was obstructed by an objection which, so far as we are informed, could have been rectified in a few minutes” (339 U.S. at 333). Moreover, it was apparent that this witness “would not have complied with the subpoenas no matter how the Committee had been constituted at the time. * * * Here respondent would have the Committee go through the empty formality of summoning a quorum of its members to gather in solemn conclave to hear her refuse to honor its demands” (*id.* at 333–334). And in *United States v. Fleischman*, 339 U.S. 349, 352, the Court, relying on *Bryan*, stated simply that the issue of a quorum “was raised for the first time at the trial, two years after [the witness’s] appearance before the Committee, where she had given other reasons for her failure to produce the documents,” and therefore “the defense of lack of quorum was not available to her.”

The principles laid down by the Court in the *Hale*, *Bryan*, and *Fleischman* cases are fully applicable as

to the issue of pertinency. When a witness challenges the pertinency of a question, the congressional committee or its counsel can explain more fully the relationship between the question and the subject under inquiry. Indeed, the committee can even change the subject under inquiry if that is necessary to make the question pertinent.¹³ Moreover, when a witness relies on other grounds for refusing to answer the question, the pertinency of the question, like the existence of a quorum, is immaterial since the witness would not have answered no matter how clear the committee made the pertinency of the question appear.

Watkins v. United States; 354 U.S. 178, considered the issue raised by petitioner—that is, the pertinency of the question to the subject under inquiry by the committee. There, the Court held that “[u]nless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency,¹⁴ to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto” (*id.* at 214–215; emphasis added).¹⁵ The footnote to this sentence

¹³ Here, the Committee resolution authorizing the hearings specifically allows the Subcommittee to investigate any matter within the Committee’s jurisdiction which the Subcommittee designates (U.S. Ex. 1, p. 2606; R. 80).

¹⁴ The witness had specifically stated to the Committee that “I do not believe that such questions are relevant to the work of this committee * * *” (354 U.S. at 185).

¹⁵ The *Watkins* case also states that “[t]he final source of evidence as to the ‘question under inquiry’ is the Chairman’s response when petitioner objected to the question on the grounds of lack of pertinency” (354 U.S. at 214).

reads "Cf. *United States v. Kamin*, 136 F. Supp. 791, 800" (354 U.S. at 215, note 55). At page 800 of the *Kamin* opinion, then District Judge Aldrich emphasized the necessity of a specific objection on grounds of pertinency:

The defendant contends that it is not enough for a question to be pertinent—the witness must be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.

The requirement that the issue of pertinency be raised before the investigating committee was made absolutely clear by the holding in *Barenblatt v. United States*, *supra*, 360 U.S. at 123–124. Indeed, this Court stated that the issue is not even raised by a memorandum submitted to the Committee by a witness saying that "I might wish to * * * challenge the pertinency of the question to the investigation" and quoting, from an opinion of this Court, "language relating to a witness' right to be informed of the pertinency of questions asked him by an administrative agency. These statements cannot, however, be accepted as the equivalent of a pertinency objection. At best, they constituted but a contemplated objection to questions still unasked, and buried as they were in the context of petitioner's general challenge to the power of the Subcommittee they can hardly be considered adequate within the meaning of what was said in *Watkins* * * *,"

to trigger what would have been the Subcommittee's reciprocal obligation had it been faced with a pertinency objection" (*id.* at 123-124).

Petitioner in the instant case did not make even the anticipatory and buried objection to pertinency made by the witness in *Barenblatt* in refusing to answer whether he was a member of the Communist Party. Rather, he based his refusal to answer this question on "conscience and personal responsibility," then gave no reason at all, and finally challenged the "legality" of the Committee under the First Amendment and its power to investigate speech, religion, peaceful association, assembly and the press (*supra*, pp. 15, 17, 19). Thus, even though the possibility of objecting to the pertinency of the questions was suggested to petitioner several times when he appeared before the Subcommittee (U.S. Ex. 1, pp. 2681, 2682, 2683, 2685, 2686; R. 155, 156, 157, 159, 160), he clearly based his refusal to answer completely on First Amendment grounds.¹⁸

R. THE QUESTION CONCERNING PETITIONER'S PARTY MEMBERSHIP WAS PERTINENT TO THE SUBJECTS UNDER INQUIRY AND THIS PERTINENCY WAS MADE TO APPEAR WITH INDISPUTABLE CLARITY TO PETITIONER

As we have shown, the decisions of this Court establish that a witness cannot raise the issue of pertinency

¹⁸ Since petitioner did not have counsel when he appeared before the Subcommittee, he can perhaps be excused from using precisely the appropriate language to raise the issue of pertinency. But petitioner's constitutional objections do not suggest that he is challenging the pertinency of the question in any sense. Moreover, since petitioner admitted that he knew that he had a right to counsel (U.S. Ex. 1, p. 2681; R. 155), his failure to raise the issue of pertinency was either deliberate or at the least done on his own responsibility.

for the first time at his trial. In any event, however, here as in *Barenblatt* (360 U.S. at 124-125), petitioner had been fully apprised of the pertinency of the question when he finally refused to answer.

In *Watkins v. United States*, *supra*, 354 U.S. at 214-215, the Court held:

Unless the subject matter has been made to appear with undisputable clarity, it is the duty of the investigative body, upon objection of the witness on grounds of pertinency, to state for the record the subject under inquiry at that time and the manner in which the propounded questions are pertinent thereto. To be meaningful, the explanation must describe what the topic under inquiry is and the connective reasoning whereby the precise questions relate to it.

Among the sources of such an explanation, the Court noted the resolution authorizing the subcommittee hearings, the opening statement of the Chairman at the hearings, the testimony of previous and subsequent witnesses, and the response of the subcommittee when the witness refused to answer the questions on grounds of lack of pertinency (*id.* at 211-214). In *Barenblatt*, 360 U.S. at 124-125, the latter three factors were relied on to show that the witness was apprised of the subject under investigation.

1. The pertinency of the question which petitioner refused to answer is clear as a matter of law. We have shown (*supra*, pp. 33-38) that the three subjects under investigation at the hearings which were the basis for subpoenaing and questioning petitioner were Communist infiltration and colonization activities in the South, the Party's organization, and the Party's propa-

ganda activities, particularly in the South, including efforts to abolish or hinder the F.B.I. and the Committee. The question whether petitioner was a member of the Communist Party was an introductory, qualifying question which was obviously pertinent to all those subjects which the Subcommittee intended to pursue.

2. As to whether petitioner was adequately apprised of the pertinency of the question at the Subcommittee hearings, the trial judge instructed the jury that in order to find petitioner guilty, it must find that "the subject matter under inquiry and the relationship or pertinency of that question to that subject matter would have been clear to the average person in the defendant's position" (R. 60). The jury's finding to this effect is fully supported by the record. The subjects under inquiry were conveyed to petitioner by all the methods suggested in *Watkins*—by the resolution authorizing the Subcommittee's investigation which was introduced into the hearing record (*supra*, p. 4) while petitioner was present (R. 34, 50) and which was available to him, by the statement of the Chairman of the Committee made at the opening of the hearings (*supra*, pp. 6-8), while petitioner was present (R. 34, 50), by the prior testimony of other previous witnesses at the hearings, particularly that of Armando Penha (see *supra*, pp. 8-12),¹⁷ and by the statements of the Staff Director and Chairman of the Subcommittee after petitioner's refusal to answer

¹⁷ The record does not show the full period of time when petitioner was present at the hearings. He was, however, present when the Chairman of the Subcommittee made his opening remarks which immediately preceded Penha's testimony.

(*supra*, pp. 15-18).¹⁸ After these statements "as to why he had been called as a witness by the Subcommittee," petitioner, like Barenblatt, asked for no further explanation (*Barenblatt*, 360 U.S. at 125).

As to the "connective reasoning" between the subjects under inquiry when petitioner testified and the particular questions asked, both the Staff Director and Chairman of the Subcommittee described the questions which would follow if petitioner answered whether he was a member of the Communist Party. The former stated that the Subcommittee wished to pursue the inquiry by questioning him concerning his activities on behalf of the Communist Party, including his propaganda activities to destroy the F.B.I. and the Committee (see *supra*, p. 17). The Chairman of the Subcommittee stated that it wished to question petitioner concerning the organization of the Communist Party in order to evaluate pending legislation (see *supra*, p. 18).

Moreover, the Subcommittee was not even required to provide petitioner with the connective reasoning. In *Barenblatt*, the Court held, with regard to an investigation of Communist activity in the field of education, that "unlike Watkins * * * [Barenblatt] refused to answer questions as to his own Communist

¹⁸ The only additional materials which we have cited to show the three subjects under inquiry at the hearings (*supra*, pp. 33-37), were the testimony of the Staff Director of the Committee at petitioner's trial, the testimony of witnesses who testified after petitioner at the hearings, and the closing statement of the Subcommittee Chairman. These materials, however, are merely cumulative evidence of the subjects under inquiry which were already fully conveyed to petitioner when he testified at the hearings.

Party affiliations, whose pertinency of course was clear beyond doubt" (360 U.S. at 125). Similarly, here the pertinence of petitioner's membership in the Party to the Subcommittee's investigation of Communist infiltration and propaganda activity in the South, and the organization of the Communist Party, was clear beyond doubt. While subsequent questions might possibly require explanation of their pertinency, this introductory question relating to the witness' ability to provide information on the subject of Communist activity was obviously pertinent.

III. THE SUBCOMMITTEE'S INVESTIGATION DID NOT VIOLATE THE FIRST AMENDMENT

In *Barenblatt v. United States*, *supra*, this Court considered, *inter alia*, whether a question asked by a congressional committee as to witness' membership in the Communist Party violated the First Amendment (360 U.S. at 126). In deciding this issue, the Court held (*ibid.*):

[T]he protections of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown.

In striking this balance, the courts must first determine whether the "investigation was related to a valid legislative purpose, for Congress may not con-

stitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose" (*id.* at 127).

A. THE SUBCOMMITTEE WAS ACTING PURSUANT TO A VALID LEGISLATIVE PURPOSE

As we have shown (*supra*, pp. 33-38), the Subcommittee had three subjects under inquiry when it subpoenaed and sought to question petitioner. Two of these subjects—Communist infiltration and colonization in the South, particularly of basic industries, and the Party's organization—are clearly not prohibited under the First Amendment. *American Communications Assn. v. Douds*, 339 U.S. 382, upheld broad congressional power to legislate in the field of Communist activity in labor and industry, and *Dennis v. United States*, 341 U.S. 494, upheld the validity of the organizing clause of the Smith Act which prohibits the organizing of groups to advocate overthrow of the Government of the United States by force or violence. The basis for these decisions is that the Communist Party is not an ordinary political party and therefore that federal legislation concerning its activity is valid even though "in a different context [it] would certainly have raised constitutional issues of the gravest character" (*Barenblatt*, 360 U.S. at 128). And, in any event, the *Barenblatt* decision established that Congress' power to investigate extends, at least to some extent, beyond its power to legislate since "of necessity the investigatory process must proceed step by step" (*id.* at 130).

As to the Subcommittee's power to investigate the third subject of the hearings—Communist activity in

the field of propaganda, including efforts to hinder or abolish the F.B.I. and the Committee—this issue is also controlled by *Barenblatt*. There, the Court held that the congressional committee could investigate Communist activity in the field of education (360 U.S. at 129-132) even though this field is protected by the First Amendment. Equally, the Subcommittee here had the constitutional power to investigate Communist activity in the area of propaganda even though this area is likewise protected by the First Amendment.

Petitioner, however, claims (Pet. Br. 20-21) that he was subpoenaed merely because of his "criticism" of the Committee and attempts to rally sentiment against it. Therefore, he contends, the Committee subpoenaed him for the invalid legislative "purpose of harassing or exposing him."¹⁹ This contention is

¹⁹ Petitioner supports his claim (Pet. Br. 21) that the Subcommittee's purpose in subpoenaing him is shown to be harassment and exposure by the fact that he had previously refused to answer questions asked by the Committee at a hearing in Los Angeles in 1956 (Hearings before the Committee on Un-American Activities, House of Representatives, 84th Cong., 2d Sess., at Los Angeles, California, December 5-8, 1956, entitled "Communist Political Subversion, Part 1," pp. 6747-6753). But there seems no reason to give special protection from congressional investigations to persons merely because they have previously refused to testify. This seems particularly true here since the Subcommittee was questioning petitioner concerning different subjects than those of the earlier hearings. Indeed, the question whether petitioner was a member of the Communist Party in 1958 sought information which could not possibly have been sought in 1956.

Moreover, while petitioner had refused to answer questions before a Subcommittee in 1956, it was not improbable that nineteen months later in 1958 he might have changed his mind—particularly since the information sought by the Subcommittee,

without merit for several reasons. First, as we have shown (*supra*, pp. 37-38), petitioner's appearance in Atlanta in an attempt to rally sentiment against the Committee was merely the occasion for subpoenaing him to testify. Second, even if that had been a purpose of the Committee in subpoenaing him, it was one kind of propaganda activity, allegedly by the Communist Party. As we have shown (*supra*, p. 51), the investigation of Communist propaganda activity is a valid legislative purpose. Third, even if petitioner's criticism of the Committee had been an independent purpose of the Committee in subpoenaing him, it was only one of several purposes—and the other three purposes (see *supra*, pp. 36-37) were clearly valid. The question as to petitioner's membership in the Communist Party was equally relevant to all these purposes (see *supra*, pp. 46-47).

Fourth, the Subcommittee was pursuing a valid legislative purpose even if it be assumed that its sole purpose was investigation of Communist Party criticism of the Committee and that such criticism does not constitute propaganda. This Committee

after the introductory question, was different. While the Committee had information that petitioner had criticized it and worked for its abolition, the Committee apparently hoped that petitioner would testify and would not again improperly invoke the First Amendment. At least, the record lends no support to the claim that the Committee knew that petitioner would not testify; in fact, the lengthy explanations made to petitioner by the Staff Director and Chairman of the Subcommittee concerning the purpose of the inquiry (see *supra*, pp. 15-18) suggest the contrary. Cf. *Flaxer v. United States*, 358 U.S. 147, 151, where the Court said that "for all we know, a witness who was adamant and defiant on October 5 might be meek and submissive on October 15."

constantly has before itself the issues whether it should be abolished, continue its present course, or change or expand its activities. The issues are presented in each session of Congress by resolutions authorizing the Committee and providing appropriations. In asking the House for action on these resolutions, it is proper for the Committee to consider the source of the criticism, at least where the Communist Party itself is the source of the criticism. The Communist Party is not just another political party, nor is it akin to other organizations interested in public affairs. As this Court has recognized (*Barenblatt*, 360 U.S. at 128), the ultimate objective of the Communist Party, to which its intermediate and peaceable objectives (such as abolition or interference with the Committee) are dedicated, is overthrow of the legislative process, and indeed the entire Government of the United States. Just as Congress can investigate Communist activities in education and propaganda, even though these are areas generally within the protection of the First Amendment, it can likewise investigate Communist efforts to influence the legislative process.

The power of Congress to investigate—not to prohibit—petitioner's legal attempts to influence legislation is strongly supported by decisions of this Court. In at least two cases, this Court has upheld disclosure statutes enacted to maintain the integrity of a basic governmental function, even though disclosure necessarily touched upon First Amendment rights to some extent. *Burroughs v. United States*, 290 U.S. 534, held constitutional the Federal Corrupt Practices Act which required disclosure of contributors to elec-

tion campaigns. *United States v. Harriss*, 347 U.S. 612, upheld the constitutionality of the Federal Regulation of Lobbying Act which required disclosure of propaganda activities affecting the legislative process (*id.* at 625): "Congress has not sought to prohibit these pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose." And *Barenblatt* clearly indicates that the investigative power of Congress extends beyond the previous limits of its powers to legislate (360 U.S. at 130).

Lastly, this Court in *Watkins* and *Barenblatt* categorically refused to consider claims such as that raised by petitioner. *Watkins* stated that, while Congress has no "power to expose for the sake of exposure," the courts cannot test "the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served" (354 U.S. at 200). Similarly, *Barenblatt*, in rejecting a claim that the "true objective of the Committee and of the Congress was purely 'exposure,'" held that, "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power" (360 U.S. at 132). This holding is particularly applicable here since, not only was the Subcommittee acting within the boundaries of Congress' constitutional power (see *supra*, pp. 50-51), but the motive of harassment and

exposure is, on the face of the record, at most only one of several motives underlying the subpoenaing of petitioner. Moreover, the Chairman of the Committee specifically stated that no witness was subpoenaed "merely for the sake of exposure or to put on a show" (see *supra*, p. 8) and the Committee's Resolution, the Chairman of the Committee, the Chairman of the Subcommittee, and the Staff Director all repeatedly stated that the hearings were being pursued, in general and with regard to petitioner, to obtain information relating to existing and contemplated legislation (see *supra*, pp. 4, 6-7, 12, 15-16, 17, 18, 22, 25).

**B. THE BALANCE OF INDIVIDUAL AND GOVERNMENTAL INTERESTS
SUPPORTS THE SUBCOMMITTEE'S INQUIRY**

This Court in *Barenblatt* considered questions asked by a congressional committee of a college teacher about his Communist Party activities. The Court concluded that "the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and * * * therefore the provisions of the First Amendment have not been offended" (360 U.S. at 134). The governmental interests at stake in the present case are at least as strong as those in *Barenblatt*:

As we have shown (*supra*, pp. 33-40), the Subcommittee in questioning petitioner was seeking information on Communist infiltration, particularly in basic industries in the South, the organization of the Communist Party, and Communist propaganda activities especially in the South. This Court has found a "close nexus between the Communist Party and

violent overthrow of government" (*Barenblatt*, 360 U.S. at 128)²⁰ and has therefore upheld broad governmental powers to investigate and legislate on Communist activities. *Id.* at 128-129; *American Communications Association v. Douds*, 339 U.S. 382; *Garner v. Los Angeles Board*, 341 U.S. 716; *Galvan v. Press*, 347 U.S. 522; *Harisiades v. Shaughnessy*, 342 U.S. 580; *Carlson v. Landon*, 342 U.S. 524; *Dennis v. United States*, 341 U.S. 494; *Adler v. Board of Education*, 342 U.S. 485; *Lerner v. Casey*, 357 U.S. 468. Thus, the strong governmental interest in this area has been repeatedly recognized by this Court.

The Court in *Barenblatt* noted three particular factors in weighing the governmental interest against that of the individual (360 U.S. at 134). First, the Court found that "[t]here is no indication in this record that the Subcommittee was attempting to pillory witnesses" (*ibid.*). Similarly, there is no such

²⁰ Petitioner attempts (Pet. Br. 18-19) to distinguish *Barenblatt* on the ground that here there was no testimony at these hearings concerning the Party's foreign domination and revolutionary purposes and efforts. But certainly the Committee was not required to establish such facts again and again in every hearing. Here, it was properly investigating new areas of Communist activity on the basis of facts previously found. Petitioner also claims *Barenblatt* is distinguishable since the Committee here showed no concern with infiltration for the purpose of attempting overthrow of the Government. Here also, however, the Committee was entitled to proceed on the basis of the previously found facts that infiltration, especially of basic industries, had this purpose. Moreover, the record of the hearings does indicate that this was the underlying concern of the Committee (see, e.g., U.S. Ex. 1, 2606-2607, 2609-2611, 2621, 2687, 2714-2715; R. 80-81, 83-85, 95, 161, 188-189).

indication in the record in the instant case. On the contrary, the Subcommittee patiently explained the valid legislative purposes of the inquiry to petitioner (see *supra*, pp. 15-18). Moreover, the Chairman of the Subcommittee suggested that petitioner "invoke the privilege of the fifth amendment if you honestly fear that the answers to the questions propounded to you would tend to incriminate you" (U.S. Ex. 1, pp. 2683-2684; R. 157-158).

Second, the Court found that Barenblatt's "appearance as a witness [did not] follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee" (360 U.S. at 134). Here, the Committee had information that petitioner was a leading and "hard-core" member of the Communist Party, that he had recently been sent to Atlanta "for the purpose of conducting Communist activities in the South and more specifically in the Atlanta area," that he had been "actively engaged" in Communist work in the Emergency Civil Liberties Committee which was thought to be a "communist operation," and that he "had been designated by the Communist hierarchy in this nation to spearhead or to lead the infiltration into the South" by that Committee (see *supra*, pp. 13-14, 16-17). Certainly, this information was a sufficient basis for the Subcommittee to ask petitioner whether he was a member of the Communist Party, preliminary to questioning him concerning Party infiltration and propaganda activity in the South, and the Party's organization. Petitioner's refusal to answer at the outset of the question-

ing, however, prevented the Subcommittee from pursuing such topics.

Third, in *Barenblatt*, the Court said that "the relevancy of the questions put to [Barenblatt] by the Subcommittee is not open to doubt" (360 U.S. at 134). The question as to petitioner's membership in the Communist Party was identical to one of the questions discussed and upheld by the Court in *Barenblatt* (*id.* at 114, 120 at note 25). Thus, the relevancy of this question in the present case is likewise clear (see *supra*, pp. 46-49).

In addition to these considerations specifically noted in *Barenblatt*, at least two other factors support the same result here. *Barenblatt* was a college teacher by profession, and one of the questions asked him and sustained by the Court related to his membership in a club of the Communist Party at the University of Michigan (360 U.S. at 114, 126 at note 25). As the concurring opinion in *Sweezy v. New Hampshire*, 354 U.S. 234, 261-263, indicated, college education is perhaps a particularly sensitive area requiring the protection of the First Amendment. Here, there is nothing to indicate that petitioner stands in any different position than any other person as to whom the Committee had information that he was an active and long-time Party member.

And the question petitioner refused to answer concerned his present Party membership. In *Barenblatt*, the Court sustained questions whether Barenblatt was ever a Party member and whether he belonged to a Party club at least four years before the committee hearings (360 U.S. at 114, 126 at note

25). Thus, there is even more reason in the circumstances of this case than in *Barenblatt* to strike the balance in favor of the governmental, rather than individual, interest.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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OCTOBER 1960.

FILED

NOV 12 1960

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1960

No. 37

FRANK WILKINSON, .

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

A basic point in all respondent's arguments is that petitioner's efforts to rally public sentiment against Congress' continuing the House Committee on Un-American Activities, even if a reason for its subcommittee interrogating him, was not the sole basis for the question he refused to answer.

To support this position, respondent repeatedly enumerates various other subjects which it states were under consideration by the subcommittee (Resp. Br. 26-27, 33, 34, 37). But it is the contempt conviction of a particular individual, the petitioner, with which we are here concerned. The issue is: in connection with what subject was petitioner called and to what subject was questioning him pertinent. In the course of this Reply, we shall show that investigation of petitioner's public agitation against

the Committee was the subcommittee's sole purpose, and furthermore that the question addressed to petitioner must be viewed in this context in order to satisfy the requirement for a contempt conviction of pertinence to a subject purportedly under inquiry. Thus viewed, the question asked petitioner was an unprecedented extension of Committee power, outside the subcommittee's authority, and a violation of the First Amendment.

Reply to Point I (Resp. Br. pp. 34-42)—Subcommittee's Lack of Authority

The topics which respondent indicates were subjects of inquiry by this subcommittee were (1) Communist infiltration of industries in the South; (2) dissemination in the United States of Communist propaganda from abroad; (3) the Party's organization and re-constitution; and (4) Communist propaganda activities, including efforts to abolish the F.B.I. and the Committee (Resp. Br. pp. 34, 37).

4. While we doubt that the third topic, the internal structure of the Party, should be deemed a subject of this investigation,¹ it in any event was clearly outside the scope of the authority delegated by the House Committee to the subcommittee (see Committee Resolution, R. 79-80). Among other limitations in paragraph 1 of the Committee Resolution, it is to be noted that the whole purpose of the subcommittee's holding hearings on the designated subjects in the South was for it to investigate local Southern matters rather than general and national problems.

Respondent seems to take the question of authorization lightly when it suggests that the subcommittee had authority to investigate the Party's re-constitution because para-

¹ Except for the statement by the chairman of the subcommittee after petitioner's refusal to answer, there seems to be no mention of this subject in the hearings; either in the statements of purpose or the questioning of witnesses.

graph 3 of the Committee Resolution empowers the subcommittee to investigate any other matter the Committee or subcommittee "may designate" (Resp. Br. 41). There is no indication whatsoever that this grant of power was exercised and any designation made (see R. 80). Again, respondent reads the provision of the House resolution granting authority for investigations by the Committee "as a whole or by subcommittee" (R. 75) to mean that any subcommittee automatically has the power to investigate everything within the jurisdiction of the full Committee (Resp. Br. 28, 40-41).

Respondent thus ignores the need for a delegation by the Committee, and indeed ignores limitations the Committee imposes on its agents. Here the Committee made some effort to instruct the subcommittee on the desired information and to establish guide-lines to channel its investigation in the light of the work and legislative purposes of the whole Committee. Nevertheless, respondent would disregard the Committee's steps to satisfy the need for a clear line of authority from the Congress to the interrogating body,¹ and would nullify the procedural and substantive restrictions it imposed on its subcommittee.

B. As to Communist infiltration of Southern industry and Communist propaganda from abroad, which respondent states were also subjects of the investigation, we would concede arguendo that these topics were within the authority conferred by Congress on the Committee and within the authority re-delegated by Committee Resolution to the subcommittee. However, the subcommittee did not

¹ The requirement of clear authorization from the Congress for the compulsions exerted by the subcommittee, is dictated not only by the provision of the contempt statute that the witness must have been summoned "by the authority of either House of Congress", but by due process as well. See *Sweezy v. New Hampshire*, 354 U. S. 234, 245, 252, 254.

subpoena petitioner to interrogate him on either of these subjects:

Except for the statement that petitioner would be questioned as to the re-constitution of the Communist Party (R. 157), which clearly seems an afterthought "for the record" and in any event was not an authorized subject, all indications at the hearing were that he was to be questioned on his public protests against the FBI and the Committee (R. 157). To reduce generalities to tangible reality, there were the "Party activities" and "communist work" (Resp. Br. 38, 39; R. 29-30) on which petitioner was to be interrogated. Thus, the authority to investigate infiltration in industry and foreign propaganda could not validate the question asked of petitioner since his interrogation was not related to either of these subjects; and such authority was further irrelevant because, as we show below in our Reply to Point II, the question petitioner refused to answer was not pertinent, within the meaning of the contempt statute, to either of these subjects.

C: As to the fourth matter stated by respondent to be a subject of the investigation, we would concede arguendo that Communist propaganda activity of some types was a subject within the authority delegated by the House to the Committee and by the Committee to the subcommittee. But we urge that this authority did not include investigation of efforts to rally public sentiment for a legislative change abolishing the Committee.

We suggest that the term "un-American propaganda" in the House Resolution establishing the Committee (see Resp. Br. p. 40), though heretofore interpreted very broadly, has been thought to apply to activity of a more covert and insidious nature, directed at infiltration and inculcation of a belief in overthrow of the government by force and violence. In both cases in this Court in which the Committee's authority has been in issue, this element

was alleged to be present. *Barenblatt*, 360 U. S. at pp. 129-130; *Watkins*, 354 U. S. at p. 204. The term has not heretofore been construed to apply to open expressions addressed to the public in favor of legislative change—change which is of course the antithesis of either insidious or violent efforts at overthrow.

Thus, to construe “un-American propaganda” to cover such expressions would give the Committee, and its subcommittee an even broader authority than it has heretofore been deemed to have. Differing from the authority claimed in *Barenblatt* (see 360 U. S. at p. 121), neither the Committee nor any of its subcommittees has heretofore claimed the power now asserted; and certainly Congress has in no way ratified it. Until now it has been assumed that a legislative committee, like other governmental bodies, must endure the shafts of criticism in the market place of opinion.

Finally, we invoke the principle that an authorization will, if possible, be construed to avoid a constitutional danger zone (see *United States v. Rumely*, 345 U. S. 41). Here as in *Rumely*, neither the Congressional nor the Committee Resolution should be construed to authorize investigation of efforts to influence the public for and against legislation, because of the grave First Amendment problem posed by such an authorization.¹

¹ The lack of relation between this area of investigation and the legislative purposes stated in the Committee Resolution (R. 79, see *infra*, p. 12), is an additional cause for doubt that the Committee intended to authorize the subcommittee to investigate in this area.

Reply to Point II (Resp. Br. pp. 42-50)—Lack of Pertinence of Question to Authorized Subject of Inquiry

4. Respondent errs in asserting petitioner cannot raise the issue of the impertinence of the question he refused to answer unless he raised this objection at the subcommittee hearing (Resp. Br. pp. 42-46). The pertinence of the unanswered question to the subject under inquiry is an element of the crime of contempt, as defined by 2 U. S. C. 192, and must be established to sustain a conviction (See *Barenblatt*, 360 U. S. at p. 123; *Watkins*, 354 U. S. at p. 208). Even if it were true that petitioner cannot contend pertinence was *unclear to him* unless he voiced a pertinence objection at the hearing, this condition does not apply to his argument that pertinence was in fact lacking. An actual lack of pertinence of the unanswered question to the subject of inquiry can not be remedied by explanation by the committee.

Respondent supports its position that an objection by the witness permits the committee to remedy the lack of pertinence, with the argument that "the committee can even change the subject under inquiry if that is necessary to make the question pertinent." (Resp. Br. p. 44). Respondent's view that the requirement for a contempt conviction of a "question under inquiry" is an ephemeral one, easily obviated, must be rejected. Respondent's concept bears on the point in our main brief that the subcommittee's investigation lacked a definite subject of inquiry, in which we assumed there would be no debate on the principle that such a subject was required, as well as on the need for a pertinency objection; we therefore shall briefly discuss the nature of this requirement.

The very form of the indictment—that the defendant “was asked a question which was pertinent to the question then under inquiry” (R. 1)—recognizes the traditional understanding that the unanswered question must be pertinent to a subject to which the Committee has been directing its inquiry. A change of “subject” from question to question or as an afterthought to a question, would cancel out the requirement of a subject for the investigation.

A definite “question under inquiry” in the investigation is not only in itself a statutory requirement for the crime of contempt and a statutory condition precedent to the existence of pertinence,¹ but we submit it is also a constitutional requirement. Unless the committee or subcommittee has settled clearly upon a subject for inquiry, neither Congress, the committee, nor the courts can determine whether the investigation is within the committee’s authority and whether it is directed at matters on which the legislature needs information.² An invasion of privacy through a committee subpoena and interrogation must find justification in terms of a legislative need for information; this principle must at the least mean that the committee has deliberated sufficiently on the need for information so as to fix a subject or subjects of inquiry.

Respondent does not reply directly to the argument in our main brief that there was no sufficiently definite subject under inquiry in this investigation. It seemingly refrains from arguing that the question under inquiry in these hear-

¹ Because 2 U. S. C. 192 provides that the question the witness refuses to answer must be “pertinent to the question under inquiry”, “The initial step in determining the pertinency of the question is to ascertain the subject matter of the inquiry then being conducted by the committee.” *Bowers v. United States*, 202 F. 2d 447, 448 (C. A. D. C.).

² Consider *Barenblatt*, 360 U. S. at p. 124; *Sweezy*, 354 U. S. at pp. 245, 254; *Watkins*, 354 U. S. at pp. 200-201, 206, 209.

ings was defined and limited by the four topics it mentions as subjects of the subcommittee's concern, and this argument would not be tenable.¹

B. Assuming *arguendo* the subcommittee had determined on the subjects stated in respondent's brief as the subjects of the hearing and assuming *arguendo* that they were sufficiently definite, the issue then is whether and how the question petitioner refused to answer was pertinent to an authorized subject of inquiry.

Respondent's overly simple argument on pertinence (Resp. Br. pp. 47-48) totally ignores the principle that the pertinency of the question to the subject of inquiry depends primarily on the connection of the witness with that subject. That is, the question "Are you a member of the Communist Party" is pertinent to the subject of inquiry if the Committee has reason to ask it in terms of a probability of securing information from the witness about that subject. Thus in *Barenblatt* the Committee was investigating Communist infiltration in education and the Committee had information the witness had been a member of student organizations. The propriety of *Barenblatt*'s conviction for refusing to answer the same question here in issue,

¹ The Committee Resolution on which respondent relies as establishing subjects of the hearings is only an authorization. It cannot establish the question the subcommittee in fact took under inquiry, and there is no statement at the hearings limiting them to the authorized subjects. And respondent itself at times relies on the broad and all-inclusive statements at the opening and close of the hearings by the Committee and subcommittee chairmen and by the Staff Director (Resp. Br. 34-37, 48; R. 80-81, 227-228, 156).

In any event, we suggest that "Communist Party propaganda activities in the South," one of the subjects stated in the Committee Resolution, is too broad to satisfy the requirement of a definite subject. Construed to include petitioner's expressions of opposition to the Committee, as it would have to be for relevance in this case, it would include any type of expression by anyone alleged to have a Communist connection.

whether he was a Communist Party member, was upheld on the basis that he was "refusing to answer questions relating to his participation in or knowledge of alleged Communist Party activities at educational institutions in this country." (360 U. S. at p. 115). It was on the basis of this construction of the unanswered question, we believe, that it was held "pertinent to the subject matter of the investigation" (360 U. S. at p. 123). It was because the information about Barenblatt indicated he was likely to have knowledge of facts related directly to the subject of the investigation, that this Court said in upholding his conviction:

"Nor did petitioner's appearance as a witness follow from indiscriminate dragnet procedures, lacking in probable cause for belief that he possessed information which might be helpful to the Subcommittee." (360 U. S. at p. 134)¹

Unless there is probable cause for interrogating the witness in the particular investigation, it is an unreasonable invasion of his privacy, unjustified by legislative need, to subpoena and question him, and due process is violated. See also *Watkins*, 354 U. S. at p. 198; *Sinclair v. United States*, 279 U. S. 263, 292. The violation of the Constitution is underlined when, as here, the interrogation infringes on First Amendment rights in addition to the general right to freedom from governmental intrusion.

On respondent's theory anyone who has been alleged, whether falsely or truly, to be connected with the Communist Party could be subpoenaed in any investigation and asked whether he is a Communist, regardless of probable cause for the Committee to believe he has information on

¹Two Courts of Appeal have similarly indicated that the requirement of pertinence or probable cause necessitates information connecting the witness with the subject of investigation. *Rumely v. United States*, 197 F. 2d 166, 177 (C. A. D. C.) aff'd 345 U. S. 41; *United States v. Orphan*, 207 F. 2d 148, 154-155 (C. A. 3).

the subject under inquiry. We submit the requirement of pertinence, both as a statutory and constitutional matter, precludes such a fishing expedition. There must be more than a mere desire by the Committee to interrogate a witness on various matters to see if it may come upon information—more than a mere *possibility* of utility—to warrant an invasion of his privacy and an interference with his constitutional rights.

The rule of probable cause is, we suggest, followed not only as a matter of fairness, but as a matter of common sense, practicality, and efficiency in the great bulk of the work of investigating committees.

The only basis on which respondent could attempt to establish probable cause in this case is that petitioner had been engaged in "setting up rallies and meetings over the country for the purpose of engendering sentiment against the Federal Bureau of Investigation, against the security program of the government, and against the Committee on Un-American Activities and its activities" (R. 30). And we would concede *arguendo* the subcommittee was entitled to infer that he intended to continue this activity against the Committee in Atlanta (See R. 38-39, 156). Other than this, its information about him related to the formation of a group of professional people in California (R. 158) and possibly in Chicago (R. 156), information which obviously had no bearing on the subjects the subcommittee was authorized to investigate or, according to respondent, was investigating. In the testimony of the chief voluntary witness Penha, as to infiltration of Communists into Southern industry (R. 27, 29), there was no word indicating petitioner had any connection therewith or knowledge thereof (R. 83-102, 167-168); nor is there any indication otherwise that the subcommittee had probable cause to believe petitioner had knowledge as to this activity. The same is true as to the other leading witness and the subject of his testimony, entry of propaganda from abroad (R. 109-117).

Thus the only one of the subjects that respondent alleges were under inquiry, to which the unanswered question could have been pertinent, was the subject of propaganda in the sense of public criticism of the Committee. This type of communication with the public was not, as we have already argued, included in the "un-American propaganda" the subcommittee was authorized to investigate (*supra*, pp. 4-5). Accordingly, petitioner's conviction is invalid because the question he refused to answer was not pertinent to an authorized subject of inquiry.

Reply to Point III (pp. 50-60)—Unconstitutionality of Interrogation of Petitioner

As we have already asserted, the constitutionality of the subpoena and interrogation of petitioner must be judged on the basis of the subcommittee's purpose to question him as to public criticism of the Committee. It must be so judged not only because this was the subcommittee's primary purpose (*supra*, p. 4), but because only in this context would the question have been pertinent to any subject which was purportedly authorized and purportedly under inquiry. It is to be noted that the court below squarely recognized that the validity of petitioner's interrogation must be appraised on the basis of his "aggressive opposition to the continued functioning of the Committee" (R. 69).

On one side of the balancing process which determines constitutionality (Resp. Br. p. 50), is the legislative pur-

¹ Petitioner was told that this was the primary point of the inquiry when he refused to answer on First Amendment grounds (R. 156-8). The statement that he would be questioned about reconstitution of the Party must have seemed secondary and an afterthought.

It may be noted that petitioner appeared before the Committee in the interim between this Court's *Watkins* and *Barenblatt* decisions.

pose to be served by the witness' interrogation. In this case the legislative purposes to be served by the investigation are stated in the Committee Resolution authorizing the subcommittee hearings, the first being to obtain information relative to amendment of the statute penalizing membership in the Communist Party (R. 79). The relation between public protest against the Committee and this legislative issue seems entirely lacking; certainly such protest could not, under our constitutional system, be considered a reason for imposing a penalty on those thought to be engaged in it.

The other legislative purpose is to add "to the Committee's overall knowledge, * * * so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it" (R. 79). It seems doubtful that this purpose shows a sufficiently compelling legislative need to justify any invasion of Constitutional right. In any event, as we pointed out in our main brief, there does not seem to be any relation between public agitation against the Committee or appeals to the public to support legislative change, and defense or security. The justification found in *Barenblatt* for that investigation, in terms of Congressional concern with infiltration of our institutions for the purpose of indoctrinating persons in the goal of overthrow of the government (360 U. S. at pp. 115, 129-130), cannot be found in this case.

Going outside the purposes stated in the Resolution, respondent suggests there was a legislative purpose in the Committee's investigating criticism of it because of its annual efforts to secure Congressional authorization and appropriations (Resp. Br. 54). On this reasoning of course, almost every committee could subpoena its critics for interrogation. Respondent supports its argument with reference to legislation requiring disclosure of political contribu-

tions¹ and of persons engaged in direct lobbying activities; the court below had similarly reasoned that there was power to legislate, and therefore to investigate regarding "interference with the legislative processes and their functioning" (R. 69). But this Court has never indicated that a disclosure requirement can be applied to those who address the public on the pros and cons of legislation, nor that such activity can be considered an interference with legislative processes. See *United States v. Rumely*, 345 U. S. 41; *United States v. Harriss*, 347 U. S. 612. "Congress has no power in respect to efforts to influence public opinion" on legislation.² Such activity is beyond the reach of legislation because it is the heart of the democratic process. Congress cannot curtail "the right of a citizen of the United States to take part, for his own or for the country's benefit, in the making of federal laws and * * * the right to speak or write about them * * *" (*Gilbert v. Minnesota*, 254 F. S. 325, 337, Brandeis, J. dissenting).

In sum, we do not see that any legislation could be had on the subject on which the Committee was seeking information from petitioners: his attempts to persuade the public to support legislation abolishing the Committee.

And we do not believe there is anything in the *Barenblatt* opinion to justify respondent's inference that the Congressional investigative power has a more pervasive scope than its legislative power (Resp. Br. pp. 30-31, 51, 55). On the contrary, this Court has continued to assert that an inves-

¹ In *Borroughs v. United States*, 290 F. S. 534 (Resp. Br. p. 54), which dealt with political contributions, there was no consideration of the First Amendment, but only of federal as against state power with respect to presidential electors.

² *Rumely v. United States*, 197 F. 2d 166, 173 (C. A. D. C.) aff'd 345 U. S. 41.

tigation must be "related to a valid legislative purpose", and that an investigation must stand in aid of the power to legislate (*Barenblatt*, 360 U. S. at p. 127); that the Congressional investigative power is "to obtain the facts needed for intelligent legislative action" (*Watkins*, 354 U. S. at p. 187). Here, the area of investigation was "an area in which Congress is forbidden to legislate"; to this area the investigative power does not extend. *Quinn v. United States*, 349 U. S. 155, 160-161.

Assuming *arguendo*, however, that the subject of petitioner's interrogation had some relationship to a potential subject of legislation, it would take more than "the mere semblance of legislative purpose" to justify the interrogation (See *Watkins*, 354 U. S. at p. 198). When First Amendment rights are affected by the investigation, the "subordinating interest of the state must be compelling". *Barenblatt*, 360 U. S. at p. 127. Respondent has not recognized the importance in the balance between legislative interest and constitutional rights in this case of this element: the drastic effect on First Amendment rights.

It cannot be doubted that validation of the Committee's power to subpoena and interrogate its critics and opponents would deter public protest and agitation for legislative change and thus curtail the exercise of basic First Amendment rights (Compare *Watkins*, 354 U. S. at p. 198). The overt and established activity in a case such as petitioner's is his public protests against the Committee; the alleged and suspected fact, based on information from a witness who is not subject to confrontation, is his Communist connection. Thus, anyone engaging in public opposition to the Committee is subject to subpoena if only someone be found who alleges that he has a Communist connection. The situation is similar to *Rumely* where a committee sought to investigate persons distributing books to influence the views of the recipients on legislation. Though the com-

mittee may have suspected the distributors were violators of the Lobbying Act, the Court of Appeals invalidated the investigation because it would deter people generally from participating in efforts to influence the public's view on legislation and thus curtail this First Amendment right (197 F. 2d at pp. 172, 174, 180).

It must be emphasized that when persons engaging in an activity can be investigated to determine if they have any Communist connection, that whole field of activity is laid open to the investigators. Thus, when the State of Alabama attempted to investigate the membership of the National Association for the Advancement of Colored People as such, this Court held the State had not shown "a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have." *N.A.A.C.P. v. Alabama*, 357 U. S. 449, +66. And *Bates v. Little Rock*, 361 U. S. 516. Yet, in *Gibson v. Florida Legislative Investigation Committee* (108 So. 2d 729, cert. den. 360 U. S. 919); it was held by the Florida Supreme Court that a State legislative investigating committee could demand identification of N.A.A.C.P. members in an investigation of whether "organizations operating in Florida in the field of race relations" had been infiltrated by "Communists and Communistic influences". Exposure of an individual's N.A.A.C.P. membership could be compelled in such an investigation, the Court held, if he had been charged with a Communist connection even though he denied it (108 So. 2d at pp. 739, 744, 745).

In sum, the subcommittee violated the First Amendment in subpoenaing and interrogating petitioner, because its investigation of public opposition to the Committee's continuance effects a drastic curtailment of First Amendment

rights, with no justification in terms of a compelling legislative purpose served by the interrogation.

Respectfully submitted,

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November 1960

No. 37

In the Supreme Court of the United States

OCTOBER TERM, 1960

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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Solicitor General,

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 37

FRANK WILKINSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

During the oral argument of this case on November 17, 1960, the question was raised as to whether or not a Congressional committee could initiate proceedings to compel the testimony of a witness under an immunity statute where the witness had invoked the privilege against self-incrimination under the Fifth Amendment.

1. The statute which authorizes the compelling of such testimony before a Congressional committee under a grant of immunity is set forth at 18 U.S.C. 3486. The pertinent portion of the statute is as follows:

§ 3486. *Compelled testimony tending to incriminate witnesses; immunity*

(a) In the course of any investigation relating to any interference with or endangering

of, or any plans or attempts to interfere with or endanger the national security or defense of the United States, by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying or from producing books, papers, or other evidence before either House, or before any committee of either House, or before any joint committee of the two Houses of Congress on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, when the record shows that—

(1) in the case of proceedings before one of the Houses of Congress, that a majority of the members present of that House; or

(2) in the case of proceedings before a committee, that two-thirds of the members of the full committee shall by affirmative vote have authorized such witness to be granted immunity under this section with respect to the transactions, matters, or things concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence by direction of the presiding officer and

that an order of the United States district court for the district wherein the inquiry is being carried on has been entered into the record requiring said person to testify or produce evidence. Such an order may be issued by a United States district court judge upon application by a duly authorized representative of the Congress or of the committee concerned.

But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecutions described in subsection (d) hereof) against him in any court.

(b) Neither House nor any committee thereof nor any joint committee of the two Houses of Congress shall grant immunity to any witness without first having notified the Attorney General of the United States of such action and thereafter having secured the approval of the United States district court for the district wherein such inquiry is being held. The Attorney General of the United States shall be notified of the time of each proposed application to the United States district court and shall be given the opportunity to be heard with respect thereto prior to the entrance into the record of the order of the district court.

(d) No witness shall be exempt under the provision of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section. [As amended Aug. 20, 1954, c. 769, § 1, 68 Stat. 745.]

Subsection (c) of Section 3486 relates to the authorization of the Attorney General to request a court order compelling testimony under a grant of

immunity in connection with a criminal case—the provision involved in *Ullmann v. United States*, 350 U.S. 422.¹

2. During the hearings which were conducted by the House Committee on Un-American Activities in Atlanta, Georgia, on July 29, 30, and 31, 1958—the hearings involved in *Braden*, No. 54, this Term, and in this case—the following colloquy took place during the interrogation of witness Jerome Van Camp (R. 185 in *Wilkinson*):

Mr. ARENS. Are you right now, today, a member of the Communist Party?

Mr. VAN CAMP. I refuse to answer on the same basis. [First and Fifth Amendments.]

Mr. ARENS. Have you ever quit the Communist Party?

Mr. VAN CAMP. I refuse to answer on the same basis.

Mr. ARENS. This Committee on Un-American Activities, young man—and you still are a very young man—

Mr. VAN CAMP. Yes, sir.

Mr. ARENS. —can recommend that immunity be granted from any criminal prosecution to certain people. I would like to ask you this: If this committee should cause to be instituted proceedings to grant you immunity so that you could not be prosecuted criminally for information developed by your own testimony, and if those proceedings should be brought to a fruition in the processes prescribed by the law

¹ This Court, in *Ullmann*, did not reach or pass upon the validity of the congressional portions of Section 3486. See 350 U.S. at 431-432. Cf. the discussion in the District Court's opinion, *In Re Ullmann*, 128 F. Supp. 617, 624-628 (S.D.N.Y.).

so that you could come clean and face your parents, face your employers, and face other citizens of this country and tell all about what you know about the Communist operation as a young man, about the Communist attempts to penetrate the industrial areas of the South, about the way Communists seize hold of the minds of young people whom they can grab up in schools and colleges and the like, would you, if you had that immunity, would you break completely with this operation and accept this immunity and tell this committee while you are under oath all you know from your personal experience about the Communist Party and the Communist operation in this country? (The witness conferred with his counsel.)

Mr. VAN CAMP. Would you repeat that question? Was that a question or—I took it as a speech. Make it simpler, please.

Mr. WILLIS. I think he is not the material we hoped he might be.

Mr. ARENS. We hoped, young man, you might want to break from the operation and testify while you are still young, while you still have an opportunity to be of service to your country.

Mr. VAN CAMP. Is that a question?

Mr. ARENS. And, in the process, to be clean—just an observation.

Mr. VAN CAMP. Thank you.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

NOVEMBER 1960.

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IN THE

Supreme Court of the United States

October Term, 1960

No. 37

FRANK WILKINSON,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S PETITION FOR REHEARING

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PETITIONER'S PETITION FOR REHEARING

The petitioner, by his counsel and pursuant to Rule 58, respectfully requests a rehearing on the judgment and decision herein of February 27, 1961 on the following grounds:

I.

The Court misconstrued the bases upon which the writ of certiorari was sought and granted, and thereby failed to consider one of the fundamental bases for the affirmation of the judgment of conviction by the court below.

The Court states: "We granted certiorari, 362 U. S. 926, to consider the petitioner's claim that the Court of Appeals had misconceived the meaning of the *Barenblatt* decision." (—U. S.—, 5 L. Ed. 2d 633, at 636). Actually, the reasons presented in the petition for the writ of certiorari were five in number, as this Court recognized at page 639. In disposing of them seriatim, the Court, however, does so only in the context of the *Barenblatt* decision and has overlooked the primary thrust of peti-

tioner's argument and thus ignored the cornerstone of the court below's opinion, affirming the judgment of conviction.

The court below held that, since the Congress had the power to require disclosures of lobbying activities, the House Committee on Un-American Activities Subcommittee could question petitioner at the particular hearings in Atlanta concerning alleged activities which the court denominated as "directed to interference with the legislative processes and their functioning" (272 F. 2d 783, at 787). It was here urged that the Congress did not have such power if lobbying activities were interpreted to mean efforts to induce the public to petition the Government for redress of grievances. This Court specifically avoided such a result by carefully circumscribing the definition of lobbying in *United States v. Harriss*, 347 U. S. 612. The Court did not reach this question here, and thus leaves in effect the lower court's definition of lobbying, which is contrary to *Harriss*. Unless this issue is reheard and the Court modifies or defines the area of permissible lobbying, no person, be he a Communist or not, can publicly petition in opposition to any Committee of Congress without fear of being subpoenaed to account for his motives in so doing.

It should be here noted that even if Congress had the power to so explain the definition of lobbying to require disclosure in carrying on such activities as here alleged, the House Committee on Un-American Activities was not authorized by the Congress to investigate in the area of lobbying activities, nor was the Subcommittee delegated by the Committee to conduct such hearings in Atlanta.

It has never been contended by the petitioner, as the Court here assumed, that the First Amendment intended "to immunize from interrogation all those (and there are many) who are opposed to the existence of the Un-American Activities Committee". Petitioner did urge a person could be questioned about any matter in which a duly constituted committee had a legitimate interest but he could not be

subpoenaed to so testify *merely* because of his public criticism and activities in opposition to the Committee. That petitioner was subpoenaed for that sole purpose was explicitly stated by the Committee director and counsel before petitioner was asked the question that he refused to answer.

II.

The Court's reaffirmation of the balancing doctrine enunciated in *Barenblatt*, as here applied, seems to repudiate the very basis for the doctrine.

The Court here states that "a cornerstone of our decision in *Barenblatt*" is that "in the last analysis this power [to legislate in the field of Communist activity in this country] rests on the right of self-preservation". Petitioner, in Point III, will raise some question as to the validity of that cornerstone, but it is here urged that the First Amendment guarantees of freedom of speech, press, and the right to petition the Government for redress of grievances, were framed for the very purpose of insuring the preservation of a democratic form of government, and that there is an overbalancing public interest in maintaining such guarantees undiluted by subjecting their exercise to interrogation into motivation, as here occurred.

The Court's opinion weighs against the State's interest in investigating Communism only the individual petitioner's interest in not being interrogated on the subject of Communist affiliations. It is submitted that there should also be placed in the scale, together with the individual interest, the weighty public interest in freedom of speech, assembly, and petition. The Court has recognized that these rights are so important that they are entitled to special judicial protection, in part because their restriction adversely affects the public interest, especially in the political field. It is submitted that the Court, upon rehearing,

should determine the weight to be given this public interest, so that the power of Congress to interfere, in the interest of the nation's self-preservation, with the right to petition for redress of grievances, can be defined.

III.

The balancing of self-preservation against political freedom as applied to the Congress needs further review by the Court as it is not in conformity with many provisions of the Constitution other than the First Amendment.

Dr. Alexander Meiklejohn, in another excellent analysis of the *Barenblatt* decision, just published in the California Law Review (Vol. 49, March 1961, No. 1), discusses aspects of this problem at length. Without recapitulating his present presentation here, it is emphasized, in his words:

"There can be no doubt that the United States, being a sovereign nation, whose political decisions are limited only by its own will, has authority to provide for its own self-preservation by denying or limiting the political freedom of its citizens. But * * * the issue in question concerns not the sovereign powers of the nation but the delegated powers of Congress. And the pronouncements concerning sovereignty would be relevant only if we assume that the sovereign United States had delegated all its powers to Congress, its agent. But the principle of 'reserved powers' makes untenable that assumption."

It is submitted that Congress has no power other than that delegated to it through the Constitution and that the Court here has not only reaffirmed *Barenblatt* but has greatly extended that decision to give virtually unbridled

¹ For the convenience of the Court, 9 preprints of this article, "The Balancing of Self-Preservation Against Political Freedom", have been deposited with the Clerk of the Court.

power to investigate anyone on any subject so long as such investigation is "in the interest of national security". Petitioner urges that, upon rehearing, this doctrine be reexamined by the Court.

CONCLUSION

Wherefore, it is respectfully submitted that the petition for rehearing be granted.

ROWLAND WATTS,

American Civil Liberties Union,
156 Fifth Avenue,
New York 10, N. Y.,
Attorney for Petitioner.

Certificate of Counsel

I, ROWLAND WATTS, attorney for petitioner, hereby certify that this petition for rehearing is presented in good faith and not for delay.

ROWLAND WATTS,

SUPREME COURT OF THE UNITED STATES

No. 37.—OCTOBER TERM, 1960.

Frank Wilkinson, Petitioner,	} On Writ of Certiorari	
v.		to the United States
United States,		Court of Appeals for the Fifth Circuit.

[February 27, 1961.]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner was convicted for having unlawfully refused to answer a question pertinent to a matter under inquiry before a subcommittee of the House Committee on Un-American Activities at a hearing in Atlanta, Georgia, on July 30, 1958. His conviction was affirmed by the Court of Appeals, which held that our decision in *Barenblatt v. United States*, 360 U. S. 409, was "controlling," 272 F. 2d 783. We granted certiorari, 362 U. S. 926, to consider the petitioner's claim that the Court of Appeals had misconceived the meaning of the *Barenblatt* decision. For the reasons that follow, we are of the view that the Court of Appeals was correct, and that its judgment must be affirmed.

The applicable statute is 2 U. S. C. § 192. It provides: "Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months." 2 U. S. C. § 192.

I.

The following circumstances were established by uncontroverted evidence at the petitioner's trial:

The Committee on Un-American Activities is a standing committee of the House of Representatives, elected at the commencement of each Congress.² The Committee, or any subcommittee thereof, is authorized to investigate "(i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and that attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

In the spring of 1958 the Committee passed a resolution providing for a subcommittee hearing to be held in Atlanta, Georgia, "relating to the following subjects and having the legislative purposes indicated:

"1. The extent, character and objects of Communist colonization and infiltration in the textile and other basic industries located in the South, and Communist Party propaganda activities in the South, the legislative purpose being:

"(a) To obtain additional information for use by the Committee in its consideration of Section 16 of H. R. 9352, relating to the proposed amendment of Section 4 of the Communist Control Act of 1954, prescribing a penalty for knowingly and wilfully becoming

² Rule X of the Standing Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823.

³ Rule XI of the Standing Rules (60 Stat. 823, 828). These Standing Rules were specifically adopted by the House, at the beginning of the 85th Congress in 1957 (H. Res. No. 5, 85th Cong., 1st Sess.).

ing or remaining a member of the Communist Party with knowledge of the purposes or objectives thereof; and

"(b) To obtain additional information, adding to the Committee's overall knowledge on the subject so that Congress may be kept informed and thus prepared to enact remedial legislation in the National Defense, and for internal security, when and if the exigencies of the situation require it.

"2. Entry and dissemination within the United States of foreign Communist Party propaganda, the legislative purpose being to determine the necessity for, and advisability of, amendments to the Foreign Agents Registration Act designed more effectively to counteract the Communist schemes and devices now used in avoiding the prohibitions of the Act.

"3. Any other matter within the jurisdiction of the Committee which it, or any subcommittee thereof, appointed to conduct this hearing, may designate."

The subcommittee which was appointed pursuant to this resolution convened in Atlanta on July 29, 1958. At the opening of the proceedings on that day, the Chairman of the Committee orally summarized the purposes of the hearings. The petitioner was present and heard the Chairman's statement.

The first witness to appear was Amando Penha, who testified that he had been a member of the Communist Party from 1950 to 1958, having joined the Party at the request of the Federal Bureau of Investigation. He stated that he had served as a member of the National Textile Commission of the Party, which, he said, was set up to control and supervise the infiltration and colonization of the textile industry, particularly in the South. He described the "colonizer" system, which, he said, involves sending hard-core Party members into plants in jobs where they have close contact with rank and file workers. Penha described in some detail his trips throughout the

South in compliance with the instructions of the National Textile Commission, and identified a number of individuals as "colonizers." Another witness, a Deputy Collector of Customs, described the influx of Communist propaganda sent from abroad into the United States and particularly into the South. Several other witnesses were then interrogated, some as to their activities as alleged Communist colonizers, others as to their connection with certain allegedly Communist-controlled publications. A number of these witnesses declined to answer most of the questions put to them.

On the following day the first witness before the subcommittee was Carl Braden. Although interrogated at length he declined to answer questions relating to alleged Communist activity.⁴ The next witness was the petitioner. After being sworn and stating his name he declined to give his residence address, stating that, "As a matter of conscience and personal responsibility, I refuse to answer any questions of this committee." When asked his occupation, he made the same response. He was then asked the question which was to become the subject of the present indictment and conviction: "Mr. Wilkinson, are you now a member of the Communist Party?" He declined to answer the question, giving the same response as before.

The Committee's Staff Director then addressed the petitioner at length, in explanation "of the reasons, the pertinency, and the relevancy of that question and certain other questions which I propose to propound to you."⁵

⁴ See *Braden v. United States*, post, p. —

⁵ "Now, sir, I should like to make an explanation to you of the reasons, the pertinency, and the relevancy of that question and certain other questions which I propose to propound to you; and I do so for the purpose of laying a foundation upon which I will then request the chairman of this subcommittee to order and direct you to answer those questions.

"The Committee on Un-American Activities has two major respon-

In response the petitioner stated "I am refusing to answer any questions of this committee." He was then directed by the Subcommittee Chairman to answer the

abilities which it is undertaking to perform here in Atlanta.

"Responsibility number 1, is to maintain a continuing surveillance over the administration and operation of a number of our internal security laws. In order to discharge that responsibility the Committee on Un-American Activities must undertake to keep abreast of techniques of Communists' operations in the United States and Communist activities in the United States. In order to know about Communist activities and Communist techniques, we have got to know who the Communists are and what they are doing.

"Responsibility number 2, is to develop factual information which will assist the Committee on Un-American Activities in appraising legislative proposals before the committee.

"There are pending before the committee a number of legislative proposals which undertake to more adequately cope with the Communist Party and the Communist conspiratorial operations in the United States. H. R. 9937 is one of those. Other proposals are pending before the committee not in legislative form yet, but in the form of suggestions that there be an outright outlawry of the Communist Party; secondly, that there be registrations required of certain activities of Communists; third, that there be certain amendments to the Foreign Agents Registration Act because this Congress of the United States has found repeatedly that the Communist Party and Communists in the United States are only instrumentalities of a Kremlin-controlled world Communist apparatus. Similar proposals are pending before this committee.

"Now with reference to pertinency of this question to your own factual situation, may I say that it is the information of this committee that you now are a hard-core member of the Communist Party; that you were designated by the Communist Party for the purpose of creating and manipulating certain organizations, including the Emergency Civil Liberties Committee, the affiliate organizations of the Emergency Civil Liberties Committee, including a particular committee in California and a particular committee in Chicago, a committee—the name of which is along the line of the committee for cultural freedom, or something of that kind. I don't have the name before me at the instant.

"It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Geor-

question as to his Communist Party membership. This time he responded as follows:

"I challenge, in the most fundamental sense, the legality of the House Committee on Un-American Activities. It is my opinion that this committee stands in direct violation by its mandate and by its practices of the first amendment to the United States Constitution. It is my belief that Congress had no authority to establish this committee in the first instance, nor to instruct it with the mandate which it has.

"I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress

gia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

"Now, sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we intend to pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Communist Party, which is tied up directly with the Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled "Operation Abolition," in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light, to destroy the F. B. I. and discredit the director of the F. B. I. and to undertake to hamstring the work of this Committee on Un-American Activities."

cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and assembly, and the press, wherein it cannot legislate and therefore it cannot investigate."

The hearing continued. The Staff Director read part of the record of an earlier hearing in California, where a witness had testified to knowing the petitioner as a Communist. The petitioner was then asked whether this testimony was true. He refused to answer this and several further questions addressed to him. There was introduced into the record a reproduction of the petitioner's registration at an Atlanta hotel a week earlier, in which he had indicated that his business firm association was the "Emergency Civil Liberties Committee."

The subsequent indictment and conviction of the petitioner were based upon his refusal, in the foregoing context, to answer the single question "Are you now a member of the Communist Party?"

H.

The judgment affirming the petitioner's conviction is attacked here from several different directions. It is contended that the subcommittee was without authority to interrogate him, because its purpose in doing so was to investigate public opposition to the Committee itself and to harass and expose him. It is argued that the petitioner was wrongly convicted because the question which he refused to answer was not pertinent to a question under inquiry by the subcommittee, so that a basic element of the statutory offense was lacking. It is said that in any event the pertinency of the question was not made clear to the petitioner at the time he was directed to answer it, so that he was denied due process. Finally, it is urged

that the action of the subcommittee in subpoenaing and questioning him violated his rights under the First Amendment to the Constitution.

In considering these contentions the starting point must be to determine the subject matter of the subcommittee's inquiry. House Rule XI, which confers investigative authority upon the Committee and its subcommittees, is quoted above. Because of the breadth and generality of its language, Rule XI cannot be said to state with adequate precision the subject under inquiry by a subcommittee at any given hearing. This the Court had occasion to point out in *Watkins v. United States*, 354 U. S. 178. See also *Barenblatt v. United States*, 360 U. S. 109, 116-117. But, as the *Watkins* opinion recognized, Rule XI is only one of several possible points of reference. The Court in that case said that "[t]he authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves" might reveal the subject under inquiry. 354 U. S. at 209. Here, as in *Barenblatt*, other sources do supply the requisite concreteness.

The resolution authorizing the subcommittee hearing in Atlanta was explicit. It clearly set forth three concrete areas of investigation: Communist infiltration into basic industry in the South, Communist Party propaganda in the South, and foreign Communist Party propaganda in the United States. The pattern of interrogation of the witnesses who appeared on the first day of the hearing confirms that the subcommittee was pursuing those three subjects of investigation. The Staff

By contrast, the authorizing resolution that was before the Court in *Watkins* incorporated by reference the full breadth and generality of Rule XI itself. That resolution simply empowered the Committee Chairman to appoint subcommittees "for the purpose of performing any and all acts which the Committee as a whole is authorized to do." See 354 U. S. at 211, n. 50.

Director's statement to the petitioner explicitly referred to the second of the three subjects—Communist Party propaganda in the South. We think that the record thus clearly establishes that the subcommittee at the time of the petitioner's interrogation was pursuing at least two related and specific subjects of investigation: Communist infiltration into basic southern industry, and Communist Party propaganda activities in that area of the country.

If these, then, were the two subjects of the subcommittee's inquiry, the questions that must be answered in considering the petitioner's contentions are several. First, was the subcommittee's investigation of these subjects, through interrogation of the petitioner, authorized by Congress? Second, was the subcommittee pursuing a valid legislative purpose? Third, was the question asked the petitioner pertinent to the subject matter of the investigation? Fourth, was he contemporaneously apprised of the pertinency of the question? Fifth, did the subcommittee's interrogation violate his First Amendment rights of free association and free speech?

The question of basic congressional authorization was clearly decided in *Barenblatt v. United States, supra*. There we said, after reviewing the genesis and subsequent history of Rule XI, that "[I]t can hardly be seriously argued that the investigation of Communist activities generally, and the attendant use of compulsory process, was beyond the purview of the Committee's intended authority under Rule XI." 360 U. S., at 120-121. The subjects under inquiry here surely fall within "the investigation of Communist activities generally."

The petitioner argues, however, that the subcommittee was inspired to interrogate him by reason of his opposition to the existence of the Un-American Activities Committee itself, and that its purpose was unauthorized harassment and exposure. He points to the Chairman's opening statement which mentioned activity against the

Committee, to the fact that he was subpoenaed to appear before the subcommittee soon after he arrived in Atlanta to stir up opposition to the Committee's activities, and to the statement of the Staff Director indicating the subcommittee's awareness of his efforts to develop a "hostile sentiment" to the Committee and to "bring pressure upon the United States Congress to preclude these particular hearings."

But, just as in *Barenblatt, supra*, we could find nothing in Rule XI to exclude the field of education from the Committee's compulsory authority, we can find nothing to indicate that it was the intent of Congress to immunize from interrogation all those (and there are many) who are opposed to the existence of the Un-American Activities Committee.

Nor can we say on this record that the subcommittee was not pursuing a valid legislative purpose. The Committee resolution authorizing the Atlanta hearing, quoted above, expressly referred to two legislative proposals, an amendment to § 4 of the Communist Control Act and amendments to the Foreign Agents Registration Act. A number of other sources also indicate the presence of a legislative purpose. The Chairman's statement at the opening of the hearings contained a lengthy discussion of legislation. The Staff Director's statement to the peti-

[T]he Committee on Un-American Activities is continuously in the process of accumulating factual information respecting Communists, the Communist Party, and Communist activities which will enable the committee and the Congress to appraise the administration and operation of the Smith Act, the Internal Security Act of 1950, the Communist Control Act of 1954, and numerous provisions of the Criminal Code relating to espionage, sabotage, and subversion. In addition, the committee has before it numerous proposals to strengthen our legislative weapons designed to protect the internal security of this Nation.

"In the course of the last few years, as a result of hearings and investigations, this committee has made over 80 separate recom-

tioner also discussed legislation which the Committee had under consideration.* All these sources indicate the existence of a legislative purpose. And the determination that purposes of the kind referred to are unassailably valid was a cornerstone of our decision in *Barenblatt, supra*: "That Congress has wide power to legislate in the field of Communist activity in this Country, and to conduct appropriate investigations in aid thereof, is hardly debatable. The existence of such power has never been questioned by this Court, and it is sufficient to say, without particularization, that Congress has enacted or considered in this field a wide range of legislative measures, not a few of which have stemmed from recommendations of the very Committee whose actions have been drawn in question here. In the last analysis this power rests on the right of self-preservation. . . ." 360 U. S., at 127-128.

The petitioner's contention that, while the hearing generally may have been pursuant to a valid legislative purpose, the sole reason for interrogating him was to expose him to public censure because of his activities against the Committee is not persuasive. It is true that the Staff Director's statement reveals the subcommittee's awareness of the petitioner's opposition to the hearings and indicates that the petitioner was not summoned to appear until after he had arrived in Atlanta as the representative of a group carrying on a public campaign to abolish the House Committee. These circumstances,

recommendations for legislative action. Legislation has been passed by the Congress embracing 35 of the committee recommendations and 26 separate proposals are currently pending in the Congress on subjects covered by other committee recommendations. Moreover, in the course of the last few years numerous recommendations made by the committee for administrative action have been adopted by the executive agencies of the Government."

* See note 5, *supra*.

however, do not necessarily lead to the conclusion that the subcommittee's intent was personal persecution of the petitioner. As we have noted, a prime purpose of the hearings was to investigate Communist propaganda activities in the South. It therefore was entirely logical for the subcommittee to subpoena the petitioner after he had arrived at the site of the hearings, had registered as a member of a group which the subcommittee believed to be Communist dominated, and had conducted a public campaign against the subcommittee. The fact that the petitioner might not have been summoned to appear had he not come to Atlanta illustrates the very point, for in that event he might not have been thought to have been connected with a subject under inquiry—Communist Party propaganda activities in that area of the country.

Moreover, it is not for us to speculate as to the motivations that may have prompted the decision of individual members of the subcommittee to summon the petitioner. As was said in *Watkins, supra*, "a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served." 354 U. S. at 200. See also *Barenblatt, supra*, 360 U. S. at 132.

It is to be emphasized that the petitioner was not summoned to appear as the result of an indiscriminate dragnet procedure, lacking in probable cause for belief that he possessed information which might be helpful to the subcommittee. As was made clear by the testimony of the Committee's Staff Director at the trial, the subcommittee had reason to believe at the time it summoned the petitioner that he was an active Communist leader engaged

primarily in propaganda activities." This is borne out by the record of the subcommittee hearings, including the content of the Staff Director's statement to the petitioner and evidence that at a prior hearing the petitioner had been identified as a Communist Party member.

The petitioner's claim that the question he refused to answer was not pertinent to a subject under inquiry merits no extended discussion. Indeed, it is difficult to imagine a preliminary question more pertinent to the topics under investigation than whether petitioner was in fact a member of the Communist Party. As was said in *Barenblatt*, "petitioner refused to answer questions as to his own Communist Party affiliations, whose pertinency of course was clear beyond doubt." 360 U. S. at 125. The contention that the pertinency of the question was not made clear to the petitioner at the time he

"The trial testimony on this score was as follows: "In essence the information of which the committee was possessed was that Mr. Wilkinson was a member of the communist party, that he had been identified by a creditable witness under oath before the committee a short time or within a year or so prior to the Atlanta hearings, identified as a Communist. It was also the information of the committee that Mr. Wilkinson had been designated by the Communist hierarchy in the nation to spearhead or to lead the infiltration into the South of a group known as the Emergency Civil Liberties Committee which itself had been cited by the Internal Security Subcommittee as a communist operation or a communist front. It was the information of the committee that Mr. Wilkinson's assignments, including setting up, rallies and meetings over the country for the purpose of engendering sentiment against the Federal Bureau of Investigation, against the security program of the government, and against the Committee on Un-American Activities and its activities. Mr. Wilkinson had in the course of the relatively recent past prior to his appearance in Atlanta been sent into Atlanta by the communist operation for the purpose of conducting communist activities in the South and more specifically in the Atlanta area. What I'm telling you now is only a general summary, you understand."

was directed to answer it is equally without foundation. After the Staff Director gave a detailed explanation of the question's pertinency, the petitioner said nothing to indicate that he entertained any doubt on this score.¹⁶

We come finally to the claim that the subcommittee's interrogation of the petitioner violated his rights under the First Amendment. The basic issues which this contention raises were thoroughly canvassed by us in *Barenblatt*. Substantially all that was said there is equally applicable here, and it would serve no purpose to enlarge this opinion with a paraphrased repetition of what was in that opinion thoughtfully considered and carefully expressed. See 360 U. S., at 125-134.

It is sought to differentiate this case upon the basis that "the activities in which petitioner was believed to be participating consisted of public criticism of the Committee and attempts to influence public opinion to petition Congress for redress—to abolish the Committee." But we cannot say that, simply because the petitioner at the moment may have been engaged in lawful conduct, his Communist activities in connection therewith could not be investigated. The subcommittee had reasonable ground to suppose that the petitioner was an active Communist Party member, and that as such he possessed information that would substantially aid it in its legislative investigation. As the *Barenblatt* opinion makes clear, it is the nature of the Communist activity involved, whether the momentary conduct is legitimate or illegitimate politically, that establishes the Government's over-

¹⁶ Since both the pertinency of the question and the fact that its pertinency were brought home to the petitioner are so indisputably clear, we need not consider the Government's contention that the record does not show that the petitioner ever did or said anything that could be understood as an objection upon grounds of lack of pertinency. See *Watkins v. United States*, 354 U. S. 178, 214-215; *Barenblatt v. United States*, 360 U. S. 109, 124.

balancing interest. "To suggest that because the Communist Party may also sponsor peaceable political reforms the constitutional issues before us should now be judged as if that Party were just an ordinary political party from the standpoint of national security, is to ask this Court to blind itself to world affairs which have determined the whole course of our national policy since the close of World War II. . . ." 360 U. S., at 128-129.

The subcommittee's legitimate legislative interest was not the activity in which the petitioner might have happened at the time to be engaged, but in the manipulation and infiltration of activities and organizations by persons advocating overthrow of the Government. "The strict requirements of a prosecution under the Smith Act . . . are not the measure of the permissible scope of a congressional investigation into 'overthrow,' for of necessity the investigatory process must proceed step by step." 360 U. S., at 130.

We conclude that the First Amendment claims pressed here are indistinguishable from those considered in *Barenblatt*, and that upon the reasoning and the authority of that case they cannot prevail.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 37.—OCTOBER TERM, 1960.

Frank Wilkinson, Petitioner, On Writ of Certiorari
v. to the United States
United States, Court of Appeals for
 the Fifth Circuit.

[February 27, 1961.]

MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS concur, dissenting.

In July 1958 the House Un-American Activities Committee announced its intention to conduct a series of hearings in Atlanta, Georgia, ostensibly to obtain information in aid of the legislative function of the House of Representatives.¹ Petitioner, a long-time opponent of the Committee,² decided to go to Atlanta for the purpose of lending his support to those who were fighting against the hearings. He arrived in Atlanta and registered in a hotel there on July 23 as a representative of the Emergency Civil Liberties Committee, a New York organization which was working for the abolition of the Un-American

¹ In my dissenting opinion in *Barenblatt v. United States*, 360 U. S. 109, 153-166, I set out the evidence from the Committee's own reports which indicates the Committee's real purpose in conducting this kind of hearing.

² During the past several years, the petitioner appears to have been associated with at least three different organizations that had as their primary aim the abolition of the Un-American Activities Committee. In addition to his association with the Emergency Civil Liberties Committee, which is shown by this record, petitioner seems to have been associated with similar organizations in Los Angeles and Chicago. At least he was accused of such associations when he was called before a previous hearing of the Committee in 1956. See Hearings before the House Committee on Un-American Activities, 84th Cong., 2d Sess., at Los Angeles, California, December 5-8, 1956, entitled "Communist Political Subversion, Part I," pp. 6747-6753.

Activities Committee. Within an hour of his registration, petitioner was served with a subpoena requiring his appearance before the Committee. When he appeared in response to this subpoena, petitioner was told that he had been subpoenaed because the Committee was informed that "you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this Committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings."³ A number of questions were then put to petitioner, all of which related to his personal beliefs and associations, but petitioner refused to answer any of these questions on the ground that they violated his rights under the First Amendment. For this, he was convicted under 2 U. S. C. § 192 and sentenced to jail for 12 months.

On these facts, which are undisputed in the record, the majority upholds petitioner's conviction as "indistinguishable" from that upheld in *Barenblatt v. United States*.⁴ On this point, I find myself only partially in disagreement with the majority. I think this case could and should be distinguished from *Barenblatt* on the ground urged by Mr. JUSTICE DOUGLAS—that the resolution authorizing the Un-American Activities Committee does not authorize that Committee to interrogate a person for criticizing it. I therefore join in the dissent filed by Mr. JUSTICE DOUGLAS on that ground. On the other hand, I must agree with the majority that so far as petitioner's constitutional claims are concerned, *Barenblatt* is "indistinguishable." Unlike the majority, however, I regard this recognition of the unlimited sweep of the decision in the

³ Significantly, the petitioner was never told, nor does the record disclose for our consideration here, either the source or the nature of the alleged information referred to.

⁴ 360 U. S. 109.

Barenblatt case a compelling reason, not to reaffirm that case, but to overrule it.

In my view, the majority by its decision today places the stamp of constitutional approval upon a practice as clearly inconsistent with the Constitution, and indeed with every ideal of individual freedom for which this country has so long stood, as any that has ever come before this Court. For, like Mr. Justice Douglas, I think it clear that this case involves nothing more nor less than an attempt by the Un-American Activities Committee to use the contempt power of the House of Representatives as a weapon against those who dare to criticize it. The majority does not and, in reason, could not deny this for the conclusion is all but inescapable for anyone who will take the time to read the record.⁵ They say instead that it makes no difference whether the Committee was harassing petitioner solely by reason of his opposition to it or not because "it is not for us to speculate as to the motivations that may have prompted the decision of individual members of the subcommittee to summon the petitioner." The clear thrust of this sweeping abdication of judicial power is that the Committee may continue to harass its opponents with absolute impunity so long as the "protections" of *Barenblatt* are observed. Since this is to be the rule under which the Committee will be permitted to operate, I think it necessary in the interest of fairness to those who may in the future wish to exercise their constitutional right to criticize the Committee that the true nature of those "protections" be clearly set forth.

⁵ I agree with the majority that, in a sense, "[t]hese circumstances, however, do not necessarily lead to the conclusion that the subcommittee's intent was personal persecution of the petitioner" (emphasis supplied), but I am satisfied that the evidence, though not absolutely conclusive, is overwhelming.

The first such "protection" relates to the question of whom the Committee may call before it. Is there any limitation upon the power of the Committee to subpoena and compel testimony from anyone who attacks it? On this point, the majority, relying upon the fact that at a previous hearing the Committee was told by a paid informant that petitioner was a Communist and upon statements by the Committee's counsel to the effect that the Committee had information that petitioner had been sent to Atlanta by the Communist Party, says simply: "It is to be emphasized that the petitioner was not summoned to appear as the result of an indiscriminate dragnet procedure, lacking in probable cause for belief that he possessed information which might be helpful to the subcommittee." Significantly, the majority does not say just how much its "emphasis" on this point is worth, if anything. Thus, for all that appears in the majority opinion, there is no assurance that the Committee will be required to produce any information at all as a prerequisite to the exercise of its subpoena and contempt powers. Assuming for the sake of argument, however, that such a requirement will be imposed, it then becomes relevant to inquire as to just how much this requirement will mean in terms of genuine protection for those who in good faith wish to criticize the Committee.

That inquiry is, to my mind, satisfactorily settled by a look at the facts of this case. So far as appears from this record, the only information the Committee had with regard to petitioner was the testimony of a paid informant at a previous Committee hearing. The only evidence to the effect that petitioner was in fact a member of the Communist Party that emerges from that testimony is a flat conclusory statement by the informant that it was so.⁶ No testimony as to particular happenings upon

⁶ The "evidence" relied upon by the Committee is contained in the following colloquy between the informant, a Mrs. Schneider, and

which such a conclusion could rationally be based⁹ was given at that hearing. When this fact is considered in conjunction with the fact that petitioner was not accorded the opportunity to cross-examine the informant or the protection of the statute permitting inspection of statements given to the F. B. I. by paid informants, it seems obvious to me that such testimony is almost totally worthless for the purpose of establishing probable cause. For all we know, the informant may have had no basis at all for her conclusion and, indeed, the possibility of perjury cannot, in view of its frequent recurrence in these sorts of cases,¹⁰ be entirely discounted. Thus, in my view, the "protection" afforded by a requirement of some sort of probable cause, even if imposed, is almost totally worthless. In the atmosphere existing in this country today, the charge that someone is a Communist is so common that hardly anyone active in public life escapes it. Every member of this Court has, on one occasion or another, been so designated. And a vast majority of the members of the other two branches of Government have fared no better. If the mere fact that someone has been called a

the Committee counsel, a Mr. Arens:

"Mr. Arens. Was it [the Citizens Committee To Preserve American Freedoms] Communist-controlled?"

"Mrs. Schneider. Yes."

"Mr. Arens. Who was the ringleader in that organization?"

"Mrs. Schneider. I didn't work in that organization, and I don't know who the ringleader was. My contact on that occasion was with Frank Wilkinson, I believe."

"Mr. Arens. Did you know him as a Communist?"

"Mrs. Schneider. Yes." Hearings before the House Committee on Un-American Activities, *op. cit.*, *supra*, n. 2, at 6730.

This, of course, is the established practice in hearings before the House Committee on Un-American Activities:

* 18 U. S. C. § 3500.

⁹ See, e. g., *Communist Party of the United States v. Subversive Activities Control Board*, 351 U. S. 115; *Mesarosh v. United States*, 352 U. S. 1.

Communist is to be permitted to satisfy a requirement of probable cause, I think it plain that such a requirement is wholly without value. To impose it would only give apparent respectability to a practice which is inherently in conflict with our concepts of justice and due process.

The other such "protection" afforded to critics of the Un-American Activities Committee under these decisions is included in the majority's so-called balancing test. Under that test, we are told, this Court will permit only those abridgments of personal beliefs and associations by Committee inquiry that the Court believes so important in terms of the need of the Committee for information, that such need outweighs the First Amendment rights of the witness and the public.¹⁹ For my part, I need look no further than this very case to see how little protection this high-sounding slogan really affords. For in this case the majority is holding that the interest of the Committee in the information sought outweighs that of the witness and the public in free discussion while, at the same time, it disclaims any power to determine whether the Committee is in fact interested in the information at all. The truth of the matter is that the balancing test, at least as applied to date, means that the Committee may engage in *any* inquiry a majority of this Court happens to think could possibly be for a legitimate purpose whether that "purpose" be the true reason for the inquiry or not. And under the tests of legitimacy that are used in this area, any first-year law school student worth his salt could

¹⁹ The test is stated by the majority in its opinion in *Barenblatt* in the following terms: "Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown." 360 U. S., at 126. Cf. *American Communications Assn. v. Douds*, 339 U. S. 382; *Beauharnois v. Illinois*, 343 U. S. 250.

construct a rationalization to justify almost any question put to any witness at any time.

Thus, in my view, the conclusion is inescapable that the only real limitation upon the Committee's power to harass its opponents is the Committee's own self-restraint, a characteristic which probably has not been predominant in the Committee's work over the past few years. The result of all this is that from now on anyone who takes a public position contrary to that being urged by the House Un-American Activities Committee should realize that he runs the risk of being subpoenaed to appear at a hearing in some far off place, of being questioned with regard to every minute detail of his past life, of being asked to repeat all the gossip he may have heard about any of his friends and acquaintances, of being accused by the Committee of membership in the Communist Party, of being held up to the public as a subversive and a traitor, of being jailed for contempt if he refuses to cooperate with the Committee in its probe of his mind and associations, and of being branded by his neighbors, employer and erstwhile friends as a menace to society *regardless of the outcome of that hearing*. With such a powerful weapon in its hands, it seems quite likely that the Committee will weather all criticism, even though justifiable, that may be directed toward it. For there are not many people in our society who will have the courage to speak out against such a formidable opponent. But cf. *Uphaus v. Wyman*, 364 U. S. 388. If the present trends continue, this already small number will necessarily dwindle as their ranks are thinned by the jails. Government by consent will disappear to be replaced by government by intimidation because some people are afraid that this country cannot survive unless Congress has the power to set aside the freedoms of the First Amendment at will.

I can only reiterate my firm conviction that these people are tragically wrong. This country was not built by men who were afraid and it cannot be preserved by such men.¹¹ Our Constitution, in unequivocal terms, gives the right to each of us to say what we think without fear of the power of the Government. That principle has served us so well for so long that I cannot believe it necessary to allow any governmental group to reject it in order to preserve its own existence. Least of all do I believe that such a privilege should be accorded the House Un-American Activities Committee. For I believe that true Americanism is to be protected, not by committees that persecute unorthodox minorities, but by strict adherence to basic principles of freedom that are responsible for this Nation's greatness. Those principles are embodied for all who care to see in our Bill of Rights. They were put there for the specific purpose of preventing just the sort of governmental suppression of criticism that the majority upholds here. Their ineffectiveness to that end stems, not from any lack of precision in the statement of the principles, but from the refusal of the majority to apply those principles as precisely stated. For the principles of the First Amendment are stated in precise and manda-

¹¹ Mr. Justice Brandeis made this very point in his concurring opinion in *Whitney v. California*, where he said: "Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that up its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty." 274 U. S. 357, 375. Mr. Justice Brandeis doubtless had in mind, and indeed made specific reference to, the famous words in Thomas Jefferson's first inaugural address: "If there be any among us who would wish to dissolve this union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

tory terms and unless they are applied in those terms, the freedoms of religion, speech, press, assembly and petition will have no effective protection. Where these freedoms are left to depend upon a balance to be struck by this Court in each particular case, liberty cannot survive. For under such a rule, there are no constitutional rights that cannot be "balanced" away.

SUPREME COURT OF THE UNITED STATES

No. 37.—OCTOBER TERM, 1960.

Frank Wilkinson, Petitioner,	{	On Writ of Certiorari
v.		to the United States
United States,		Court of Appeals for the Fifth Circuit.

[February 27, 1961.]

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACK concur, dissenting.

When petitioner was summoned before a subcommittee of the House Committee on Un-American Activities in Atlanta, Georgia, the Staff Director for the Committee made the following statement to him:

"It is the information of the committee or the suggestion of the committee that in anticipation of the hearings here in Atlanta, Georgia, you were sent to this area by the Communist Party for the purpose of developing a hostile sentiment to this committee and to its work for the purpose of undertaking to bring pressure upon the United States Congress to preclude these particular hearings. Indeed it is the fact that you were not even subpoenaed for these particular hearings until we learned that you were in town for that very purpose and that you were not subpoenaed to appear before this committee until you had actually registered in the hotel here in Atlanta.

"Now, sir, if you will tell this committee whether or not, while you are under oath, you are now a Communist, we intend to pursue that area of inquiry and undertake to solicit from you information respecting your activities as a Communist on behalf of the Communist Party, which is tied up directly with the

Kremlin; your activities from the standpoint of propaganda; your activities from the standpoint of undertaking to destroy the Federal Bureau of Investigation and the Committee on Un-American Activities, because indeed this committee issued a report entitled 'Operation Abolition,' in which we told something, the information we then possessed, respecting the efforts of the Emergency Civil Liberties Committee, of which you are the guiding light, to destroy the F. B. I. and discredit the director of the F. B. I. and to undertake to hamstring the work of this Committee on Un-American Activities.

"So if you will answer that principal question, I intend to pursue the other questions with you to solicit information which would be of interest—which will be of vital necessity, indeed—to this committee in undertaking to develop legislation to protect the United States of America under whose flag you, sir, have protection."

"Now please answer the question: Are you now a member of the Communist Party?"

Petitioner answered, "I am refusing to answer any questions of this committee."

After a further explanation he was directed to answer. He replied:

"I have the utmost respect for the broad powers which the Congress of the United States must have to carry on its investigations for legislative purposes. However, the United States Supreme Court has held that, broad as these powers may be, the Congress cannot investigate into an area where it cannot legislate, and this committee tends, by its mandate and by its practices, to investigate into precisely those areas of free speech, religion, peaceful association and

assembly, and the press, wherein it cannot legislate and therefore it cannot investigate.

The Committee is authorized by the Resolution governing it to make investigations of "the extent, character, and objects of un-American propaganda activities in the United States."

If it is "un-American" to criticize, impeach, and berate the Committee and to seek to have it abolished, then the

The Washington Post on January 4, 1961, made a similar criticism of the House Committee on Un-American Activities.

The Committee often functions as a kind of public pillory to punish men by publicity for offenses which the Constitution forbids Congress to make punishable by law. It exposes men who express opinions or indulge in associations of which the Committee disapproves, carelessly calling them—or allowing witnesses under the cloak of congressional immunity to call them—Communists or Communist-sympathizers or Communist dupes.

The Committee, as a consequence of this conduct, sometimes operates as a serious restraint on freedom of expression and freedom of association. It makes Americans fearful of uttering opinions for which they may be called to account by the Committee and fearful of joining organizations which the Committee may consider subversive.

The ultimate mandate of the parent Committee at the time of the subcommittee hearing was to be found in paragraph 17 (d), Rule XI, Rules of the House of Representatives, H. R. 5, 85th Cong., 1st Sess., 103 Cong. Rec. 47. It provides: "The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." The record in this case also contains the mandate of the subcommittee (see note 5, *infra*), but the terms of the parent Committee's mandate is of course controlling. Of the purposes of the Committee, only the investigation of "un-American propaganda" activities seems even arguably to authorize the questions asked and the inquiry pursued in this case.

Committee acted within the scope of its authority in asking the questions. But we take a dangerous leap when we reach the conclusion that criticism of the Committee was within the scope of the Resolution.

Criticism of government finds sanctuary in several portions of the First Amendment. It is part of the right of free speech. It embraces freedom of the press. Can editors be summoned before the Committee and be made to account for their editorials denouncing the Committee, its tactics, its practices, its policies? If petitioner can be questioned concerning his opposition to the Committee, then I see no reason why editors are immune. The list of editors will be long as evident from the editorial protests against the Committee's activities, including its recent film, *Operation Abolition*.¹

¹ See note 1, *supra*.

The Washington Post said editorially December 28, 1960:

"In his letters printed elsewhere in this newspaper today, Rep. Francis Walter asserts that the film *Operation Abolition* 'contains absolutely no distortions' and that the staff member who had admitted it contained such defects 'had not himself used the word 'distortions' ". In a television show over KCOP-TV, Los Angeles, a teaching assistant at the University of California referred to distortions in the film. William Wheeler, an investigator for the House Un-American Activities Committee, taking part in the program asked, 'What are you trying to prove by this?' The following exchange then took place:

"Mr. White: That the film has inaccuracies and distortions.

"Mr. Wheeler: I've admitted that.

"Mr. White: You've admitted that?"

"Mr. Wheeler: Certainly.

Mr. Walter offers some carefully selected quotes from the San Francisco press to refute this newspaper's assertion that the San Francisco police reacted with altogether needless ferocity. Like the film *Operation Abolition* itself, he omits all the material showing the other side of the picture. For instance, San Francisco *Chronicle* reporter George Draper wrote:

"I did not see any of the kids actually fighting with the police. Their resistance was more passive. They would simply go limp and be manhandled out of the building. . . . I saw one slightly built kid

The First Amendment rights involved here are more than freedom of speech and press. Bringing people together in peaceable assemblies is in the same category. *De Jonge v. Oregon*, 299 U. S. 353. "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *Id.*, at 364. The right to petition "for a redress of grievances" is also part of the First Amendment; it too is fundamental to "the very idea of a government, republican in form." *United States v. Cruikshank*, 92 U. S. 542, 552. Chief Justice Hughes, speaking for the Court in the *De Jonge* case involving communist activities, no more nor less lawful than those charged here, said:

"The greater the importance of safeguarding the community from incitements to the overthrow of our

being carried by two husky officers. One held the boy's shirt, the other had him by the feet. He was struggling, but he was no match for the two bigger men. Then from nowhere appeared a third officer. He ran up to the slender boy firmly held by the other two officers and clubbed him three times on the head. You could hear the hollow smack of the club striking. The boy went limp and was carried out.

"Nor does Mr. Walter mention the report of another eyewitness, Mel Wax, a special correspondent of the *New York Post*:

"Never, in 20 years as a reporter, have I seen such brutality. . . . San Francisco police hurled women down the staircase, spines bumping on each marble stair."

To Mr. Walter, it is an admitted but "decidedly minor" distortion in the film that Harry Bridges was represented as being on the scene just before the rioting broke out when, in point of fact, he did not arrive until after it was all over. "Honest" this error may have been; but it was more than unfortunate. For it contributed considerably to the deceptive and distorted message of the film that the student demonstration was inspired and led by Communists.

"Communists may have tried to claim the credit which Mr. Walter accords them. Unquestionably the affair got out of hand, and no one condones the rowdiness that ensued. But the truth is that the demonstration was inspired by distaste for the Un-American Activities Committee. And it was led by students who intended nothing more than an orderly protest—an inalienable political right in the United States."

institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

De Jonge v. Oregon, supra, at 365.

These are reasons why I would construe the Resolution narrowly so as to exclude criticism of the Committee. We have customarily done just that, insisting that if "an inquiry of dubious limits" is to be found in an Act or Resolution, Congress should unequivocally authorize it. *United States v. Rumely*, 345 U. S. 41, 46; *United States v. Harriss*, 347 U. S. 612; *Watkins v. United States*, 354 U. S. 178, 198.

The indictment charged only the failure to answer the one question, "Are you now a member of the Communist Party?" That question in other contexts might well have been appropriate. We have here, however, an investigation whose central aim was finding out what criticism a citizen was making of the government. That was the gist of the case presented to the jury.

At the trial committee counsel was cross-examined as follows:

"Q. Mr. Arens, you stated before the committee that Mr. Wilkinson had come to Atlanta to stir up hostility to the committee, that he was doing everything he could to prevent these hearings from being held in Atlanta?"

"A. Yes, sir.

"Q. And that you did not subpoena him until you discovered that he had arrived here for that purpose?"

"A. That's correct, sir.

"Q. Now, you state that within the three general categories under which the committee was holding hearings here of colonization in the textile industry, entry and dissemination of foreign propaganda and

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We cannot allow this man to go to prison for 12 months unless we hold that an investigation of those who criticize the Un-American Activities Committee was both authorized and constitutional. I cannot read the Resolution as authorizing that kind of investigation without assuming that the Congress intended to flout the First Amendment.

Communist party propaganda activity in the South, you are stating that Mr. Wilkinson stirring up hostility to the House Committee on Un-American Activities comes within the category of Communist party propaganda activity which justified the House Committee to subpoena him and question him, is that correct? I just want to understand your position.

"A. Yes, in general I agree with you, yes."

SUPREME COURT OF THE UNITED STATES

No. 37.—OCTOBER TERM, 1960.

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v.			to the United States
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[February 27, 1961.]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting:

For the reasons stated in my Brother DOUGLAS' dissenting opinion in *Braden v. United States*, *post*, p. —, which I joined, I believe that the Committee failed to lay an adequate foundation at the hearing for questions which, it was claimed, concerned the exercise of rights protected by the First Amendment.

I also dissent because on these facts the inference is inescapable that the dominant purpose of these questions was not to gather information in aid of law-making or law-evaluation but rather to harass the petitioner and expose him for the sake of exposure. A scant 19 months before the hearing in question petitioner was summoned before this very Committee and refused to answer questions on substantially the same grounds as those he claimed in this instance. Nor did his conduct in the interim afford any basis for a hope that he might have repented, an inference which, by contrast, was possible in *Flaxer v. United States*, 358 U. S. 147, 151, cited by the Government. For petitioner continued to proclaim his hostility to the Committee and his belief that it had no power to probe areas of free expression. He was not even called to testify at these hearings in Atlanta until the Committee learned that he was to be present in Atlanta to express his opposition to the Committee's work, as, of course, he had a right to do. In fact, the Committee's Staff Director came

perilously close to admitting, on cross-examination by petitioner's counsel, that petitioner was called to the stand only because of his opposition to the Committee's activities.

It is particularly important that congressional committees confine themselves to the function of gathering information when their investigation begins to touch the realm of speech and opinion. On this record, I cannot help concluding that the Committee had no reasonable prospect that petitioner would answer its questions, and accordingly that the Committee's purpose could not have been the legitimate one of fact-gathering. I am forced to the view that the questions asked of petitioner were therefore not within the Committee's power. Cf. *Barenblatt v. United States*, 360 U. S. 109, 166 (dissenting opinion); *Uphaus v. Wyman*, 360 U. S. 72, 82 (dissenting opinion). I would reverse.